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# Supreme Court of the United States,

OCTOBER TERM, 1920.

No. 273.

WEBER ELECTRIC COMPANY,

*Petitioner,*

*vs.*

E. H. FREEMAN ELECTRIC COMPANY,

*Respondent.*

# BRIEF FOR PETITIONER.

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March, 1921.

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*Respondent.*

## BRIEF FOR PETITIONER.

This suit comes before this Court on a writ of *certiorari* issued to the United States Circuit Court of Appeals for the Third Circuit in the case of Weber Electric Company, petitioner here and plaintiff below, against the E. H. Freeman Electric Company, respondent here and defendant below.

The opinion of the Circuit Court of Appeals for the Third Circuit is reported in 262 Fed. Rep. 769, and is also printed at page 412 of the Record. A petition for rehearing was filed, but was denied.

The action is an equity action brought for an injunction and an accounting of profits and damages for the infringement of the Weber patent No. 743,206, issued November 3, 1903, for Incandescent Electric Lamp Socket (p. 244).

Claims 1 and 4 only are in issue. Claims 2 and 3, also, were before the Circuit Court of Appeals, but are not now involved.

The value and importance of the invention defined in claims 1 and 4 have long been recognized. Seven manufacturers of

lamp sockets have taken licenses under this patent (p. 85, Q. 33). Various other manufacturers have, without right, sought to make use of that invention, with the result that these claims have been continuously in litigation ever since 1909; and they have uniformly been sustained.

In that series of suits against others than the respondent, this patent has been under consideration on ten different hearings before seven District Judges in the 1st, 2nd, and 3rd Circuits, on all of which claim 4 was in issue and on six of which hearings claim 1 was also in issue.

The patent has also been under consideration by the 2nd Circuit Court of Appeals on four occasions, on all of which claim 4 was in issue, and on three of which claim 1 was also in issue.

On each of the above mentioned hearings claim 4 has been held valid and infringed, and on each where claim 1 was in issue it also has been held valid and infringed.

The Third Circuit Court of Appeals has not questioned the validity of either of these claims; and in its decision here complained of, it cited *without disapproval* the previous decisions of these other courts which had repeatedly held these claims, and particularly claim 4, to be entitled to a fair range of equivalents.

But the Third Circuit Court of Appeals held that the respondent did not infringe.

The principal reason that was urged by the petitioner for the granting of the present writ was that, after the decision of the Circuit Court of Appeals in the instant case, the Circuit Court of Appeals for the Second Circuit in a suit against another defendant, but *involving the same question of infringement*, held the claims here in issue were infringed. That Court said (263 Fed. Rep. 583, 585) that it was compelled—

> "regretfully to differ from the views regarding scope and interpretation of these claims expressed in the recent judgment of our sister court in the Third Circuit Court of Appeals respecting the Freeman [the present respondent's] device."

So the question of infringement is the substantial question here involved.

The opinion of the various judges and courts, including those in the present case, have for convenience of reference been compiled in a volume of COURT OPINIONS which will be submitted to this Court. The suits against others than this respondent were against:

*National Gas & Electric Fixture Company*, Southern District of New York, in which each of claims 1 and 4 were held valid and infringed by two forms of the defendant's "Union" socket there in evidence (204 Fed. Rep. 79; Court Opinions, p. 1). This decision was affirmed by the Second Circuit Court of Appeals (212 Fed. Rep. 948; Court Opinions, p. 31).

*Union Electric Company*, District of New Jersey, in which each of claims 1 and 4 was held valid and infringed by the same two types of Union socket as those in the National Gas Case; and on a first supplemental bill and a second supplemental bill claim 4 was held valid and infringed by two later forms of the Union socket there in evidence (226 Fed. Rep. 482; Court Opinions, 41; unreported, Court Opinions, 55, 60).

*Wirt Manufacturing Company*, District of Massachusetts, in which claims 1 and 4 were held valid and infringed by the Wirt socket (226 Fed. Rep. 481; Court Opinions, p. 39).

*The Cutler-Hammer Manufacturing Company*, Southern District of New York, in which claims 1 and 4 were held valid and infringed by the Cutler-Hammer socket (Unreported, Court Opinions, p. 65). This decision was affirmed by the Second Circuit Court of Appeals (256 Fed. Rep. 31; Court Opinions, p. 77).

*The Connecticut Electric Manufacturing Company*, District of Connecticut, in which claim 4 was held valid and infringed by the Connecticut socket, which has the same characteristic feature as the respondent's socket (257 Fed. Rep. 429; Court Opinions, p. 97). This decision was affirmed by the Second Circuit Court of Appeals which, after comparing the Connecti-

cut socket with the respondent's socket, stated (263 Fed. Rep. 583, 585; Court Opinions, 117).

> "These reasons compel us to think the order appealed from right and regretfully to differ from the views regarding scope and interpretation of these claims expressed in the recent opinion of our sister Court in the Third Circuit respecting the Freeman device."

The District Court of Connecticut again sustained claim 4 against a later type of Connecticut socket as to which no appeal was taken (Unreported; Court Opinions, p. 129).

*W. R. Ostrander & Co.*, Southern District of New York, in which claims 1 and 4 were held valid and infringed by the Ostrander socket which has the same characteristic feature as the respondent's socket and the Connecticut socket (267 Fed. Rep. 445; Court Opinions, 123). This was affirmed by the Second Circuit Court of Appeals without opinion (267 Fed. Rep. 448). Thereafter the case was tried before Judge Learned Hand who held claims 1 and 4 valid and infringed; and no appeal has been taken from that decision.

Of the sockets which have been held to infringe these claims 1 and 4, the Connecticut sockets and the Ostrander socket, like the respondent's socket, require a slight rotational movement in telescopically assembling and locking together the cap and sleeve, which are the two parts constituting the shell of the socket.

The sole question on which the courts of the Third and Second Circuits have differed is as to whether a device, which in all other respects embodies the subject matter and invention of claims 1 and 4 of the patent in suit, is brought outside the scope of those claims by reason of a slight rotational component in the movement whereby the sleeve and cap of the device are telescopically assembled and automatically interlocked.

Or in other words, are these two claims by reason of the word "telescopically", which appears therein, limited and restricted to a straight longitudinal movement only, in telescopically assembling and interlocking the sleeve and the cap

The Third Circuit Court of Appeals in the present case has held that these claims are so limited and restricted, and that the respondent's socket therefore does not infringe said claims.

The Second Circuit Court of Appeals in the companion Connecticut case has held directly to the contrary.

## I.

## The Invention in Issue and its Effect on the Art.

The matter in controversy is a socket for an incandescent electric lamp.

An incandescent electric lamp has a screw-threaded base or end, and the socket has a screw-threaded sleeve into which the base of the lamp is screwed. This screw-threaded sleeve is fixed upon a porcelain body upon which are also fixed separate metal contacts which are automatically brought into electric connection with the electric terminals of the lamp by the operation of screwing the lamp into the socket.

The porcelain body and metal parts fixed thereon are enclosed within a case comprising a sheet-metal sleeve, and a sheet-metal cap telescopically fitting over the inner end of the sleeve, the cap being formed with a central aperture through which the insulated line-wires enter the socket, the ends of the wires being stripped of their insulation and secured by binding-screws in electrical connection with the respective metal contacts.

The switch-mechanism in a key-socket is also mounted upon the porcelain base, the switch-handle or key projecting out through a slot in the sleeve-member of the case.

The socket, in many cases, simply hangs suspended by a cord or cable which contains the line-wires.

When the socket is applied to a wall or a fixture, the cap is fixedly mounted thereupon and serves to support the weight of

the sleeve-member of the casing with the porcelain body and the parts mounted thereon, as well as the lamp, and in many cases a shade and shade-holder.

The sheet-metal casing of the socket is properly insulated from the enclosed parts, and so long as the casing remains intact, it forms an ornamental enclosure, and prevents contact of external objects with the live parts of the device; but *whenever the sleeve and cap of a socket-casing become separated in use, the live parts, such as the metal contacts, screw-sleeve and bare ends of the line-wires, are left more or less exposed, and the socket becomes a fire-hazard and a menace to the safety of persons in the immediate vicinity.*

The prominent problem, therefore, was to devise such a construction that these parts may firmly and effectively be locked together, while still being capable of ready separation whenever such separation is desired. Difficulties in the solution of the problem were introduced largely by reason of the small size of the device as a whole, the necessary thinness and lightness of the cap and sleeve and the confined locations in which the devices are frequently used in electric light fixtures.

For twelve years prior to Weber's invention, the predominant type of lamp-socket had the cap and sleeve held together by two side screws in the flange of the cap engaging bayonet slots in the sleeve. (See Plaintiff's Exhibit, Lange-type Socket.)

It is beyond dispute that this was a very unsatisfactory device and that the snap-shell socket has supplanted the screw fastened socket.

In Weber's snap-shell socket the sleeve is provided with a slot which renders it compressible, and either the cap or sleeve has a projection which is so beveled that the cap can ride over the sleeve telescopically *without manipulation of this projection*, while the other member has a recess or aperture into which this projection automatically snaps, and the projection has so abrupt a termination that it forms a *positive* lock, that is, a lock which, as distinguished from a mere frictional lock, can be released only by deliberate manual compression of the slotted sleeve.

Claim 4 of the patent in suit, is the first claim in the art for a *practical* lamp-socket-case held together without the use of screw-mechanism. Sockets having the fastening mechanism of this claim, by whomsoever made, are commonly known as "snap-shell" sockets. This snap-shell fastening is *automatic* in that it comprises projections on one of the case-members so formed as not to interfere with telescopically inserting the sleeve within the cap (that is without manipulation of these projections), and adapted by the mere assembling of the sleeve and cap to automatically interlock with the other case-member with a snap action, whereby the case-members are positively locked together and cannot be separated until the slotted sleeve has been intentionally compressed to release the locking projections, such compresion of the sleeve being provided for either by the key-slot in a key-socket, or by a slot formed for the purpose in the sleeve of a keyless socket.

The specification of the patent in suit states (p. 245, line 29) that "the principal object of my invention is to provide a simple and effective automatically locking connection between the sleeve and the cap of an incandescent electric lamp socket," and the evidence shows beyond a doubt that the Weber snap-shell socket was the first in the art which accomplished this object in a *practical* manner.

The preferred manner in which this object is accomplished, as set forth in the drawings and specifications of the patent, is by transversely slitting the wall of the cap or sleeve-member and displacing the wall on one side of the slit to form an inclined projection over which the other case-member can automatically ride in telescopically assembling the case-members, the other case-member being provided with a recess into which the high end of the inclined projection snaps when the case-members are fully assembled. Two of these fastening devices are employed at diametrically opposite sides of the socket. These devices terminate so abruptly at their high end at the slit, that they form a *positive* snap-lock which cannot be released without deliberate and intentional compression of the slotted sleeve-member.

The combination in a lamp socket of these two features of the snap fastening—*automatic* in that it requires no manipulation in telescopically assembling the case-members, and *positively* interlocking so as to require deliberate manual compression of the slotted sleeve to release the lock—was absolutely new with Weber; and to the combining of these two features is due the unprecedented commercial success of the snap-shell socket, which today is practically the *only* type of socket on the market.

In Figs. 1 and 2 of the patent drawings (p. 214) the locking projections 14, are formed by outward displacement of the wall of the shell and these projections snap into the recesses, 13, in the flange of the cap 2. In Fig. 3 the projections, 20, are formed by inward displacement of the flange of the cap, 2, which projections snap into recesses, 21, in the wall of the sleeve, 17. These alternative embodiments of the invention operate in precisely the same manner. In each case no manipulation of the locking projections is necessary, they being automatically operated by the mere assembling of the sleeve and the cap. In each case the projection terminates abruptly and squarely and makes a positive snap-engagement with the recess which it enters; and in each case the inner member, which is the sleeve, is slotted at 12 in Fig. 2 and at 18 in Fig. 3 to permit the wall of the sleeve to be forced inward by the hand to release this positive lock.

Claim 4 of this patent is for this snap-shell construction.

Claim 1 is for the automatic snap-shell feature in combination with introverted tongues (shown at 15 in Fig. 2) on the sleeve adapted to engage recesses in the enclosed porcelain body. To provide for sufficient inward movement of the wall of the sleeve to release the snap-lock, the porcelain body is made to fit somewhat loosely within the sleeve and tends to rotate freely within the case. The inwardly projecting tongues on the sleeve, by engagement with the recesses in the porcelain body, support the porcelain body against sidewise or rotative movement and thus prevent the wires, connected with the con-

tacts on the porcelain body, from being twisted off by the screwing and unscrewing of the lamp bulbs.

It cannot be seriously disputed that Weber was the first to bring together in a lamp-socket a sleeve having introverted tongues adapted to engage the enclosed porcelain body, and a snap-fastening for the case-members adapted to be automatically locked *by the same telescopic assembling movement* of the case-members which brings the tongues into engagement with the porcelain body.

In fact, Defendant's expert admits this (x-Q. 20, p. 162).

And this contribution of this patentee worked a great advance in this art.

For a number of years prior to the advent of the Weber Snap-Shell Socket in about 1905, the socket-shell fastening in general use comprised two screws inserted through the flange of the cap, and slots in the sleeve to receive these screws, as shown in the Exhibit, Lange-Type Socket.

About 1893 the screw-and-slot fastening became the standard fastening, after years of experimentation with other types. From 1893 to 1905, the screw-and-slot fastening maintained its supremacy and represented the highest development in the art, although it is repeatedly shown, and is undisputed, that for years the defects and dangers of the screw-shell fastening were recognized by the manufacturers. Many forms of screw devices were tried, and the screws and slots were finally adopted as the best form of these screw-fastenings.

It appears, therefore, that prior to the introduction of the Weber Snap-Shell Socket, there had been no socket upon the market having its case-members secured together by a *positive lock which could not be released by vibration.* Within a few years after the Weber-Snap-Shell Socket was first placed upon the market, we find that the snap-shell socket had acquired undisputed possession of the market, the screw-and-slot fastened socket having been universally discredited and superseded by the snap-shell socket with its positive lock. Now it seems almost absurd that any other form of fastening had ever been resorted to.

We call attention to the testimony of the witnesses, Ball, Robb, Sullivan and Hight for the history of, and the reason for, the transition from the screw-and-slot fastening to the snap-shell.

Mr. Ball is probably one of the best informed men in this country on the subject of lamp-sockets. He has been connected with the electrical art since 1888. He is an inventor of note, having taken out a great number of patents for electrical inventions (Q. 12, p. 101). After graduation from the University of Pennsylvania, he was a practical wireman, then inspector of wiring, and then a designer of sockets. At the time of his testimony he was engineer of heating devices for the General Electric Company, these devices comprising electric sad-irons, electric stoves for table use, electric toasters, &c., adapted to be connected by a cord and plug with the lamp-socket. For some time prior to 1893, he was associated with the patentee, August Weber, Sr., and with W. S. Andrews, Metzger, Tournier, Donnelly, Gengenbach and six or eight other expert mechanics in this art; and one of the problems with which they struggled for some years was that of overcoming the dangers and defects of the side-screw fastening of the socket.

It is impossible to do full justice to Mr. Ball's testimony by a mere synopsis of it, as almost all that he says is of real importance.

In his answer to Q. 8, page 101, he says:

> "I had devoted considerable of my time to designing sockets with the General Electric Company and still had, after being transferred to Schenectady, a number of workmen who gave all of their time to experimental work. One or two of these men were working continually on sockets. The other men were working on other devices. When I saw Mr. Weber's socket I was surprised at the audacity of the design, for the reason that we had been working a number of years to perfect the socket put out by the General Electric Company; and, notwithstanding the fact that we knew of the weakness in the side screws, we were not able, through the ingenuity of myself and others, to overcome this objection. When

I saw Mr. Weber's method of overcoming it I did not think it would be successful. There were too many uncertainties involved, the accuracy with which it had to be made, the resiliency of the metal, the irregularities that would creep in in the manufacture and the seriousness of the lock giving way, all seemed to work against the successful introduction of a snap catch. The troubles with the side screws and other means of holding the shell and cap together we knew of. It was a common sight in those days to see sockets in fixtures and in other places with the shell entirely gone. The trouble was in the vibration loosening the screws, allowing them to drop out and the socket to fall to pieces. As I saw it the snap catch would have to be very accurately made in order to be as safe as the side screws. At that time there were a number of manufacturers of sockets—eight or nine of them—each one showing considerable ingenuity in the development of the art, but, in all of their sockets, they resorted to the side screws. This confirmed my own opinion regarding the side screws, that it was better to submit to known disadvantages and troubles than to court new ones. It is rather significant that to-day there are more manufacturers of sockets on the market than there were then by perhaps almost 50 per cent., and to-day every socket has a snap catch to hold it together and, in my judgment, side screws or any other construction of a screw form would not be successful in view of the experience that we have had in the last few years demonstrating the practicability of the snap socket."

With reference to the Lange type of socket, which was the standard type prior to the Weber snap-shell, he says (p. 102, Q. 10):

"This form was a development. The early form was to hold the sleeve by a threaded ring on the screw shell. This threaded ring form was bad from every standpoint. It was expensive, being a moulded part it was brittle, it worked loose, encouraged short circuits by reason of the shell not being held tight in position, and would permit the entire shell to drop off the socket at which time it became a fire hazard, and being plainly in sight it brought

considerable discredit to the electrical business in general, and the first step was to prevent the shell from dropping off, even if the ring itself became broken or dropped off. This led to the introduction of side screws. There were various forms of side screws used, but all of the same general characteristics; the screw clamped the shell between the cap and a nut or stirrup to hold it securely in position. This was a decided step in advance, for the reason that, even if a ring dropped off, yet the danger of short circuit and people getting shocks from the socket was largely obviated. The next step was to put a fibre or paper lining in the shell, doing away with the threaded ring. This was done in several ways, fibre lining being made in one instance in a single piece and in another instance in separate pieces. This has the advantage of having no loose pieces, and it was impossible for the shell to become alive through tilting to one side and touching live metal parts in the interior mechanism of the socket. During all these improvements, running, to my knowledge, from 1888 up until 1893, at which time I gave up my direct association with the development of sockets and their manufacture, we had with us side screws and all of their inherent defects and trouble. I would have naturally taken very kindly to any substitute for the screws, and, if I had thought Weber's method of overcoming them was practical and could have been worked out, I would have been extremely enthusiastic, and, even to-day, I am surprised at how roughly some of Weber's imitations are made, yet, how well they perform their functions. During the time that I was directly interested in the design of improved sockets we made many models, running over a period of a couple of years or more, which models were primarily made to overcome the difficulties with these same screws. The best we ever got out of it was to screw the cap and shell together. This form had been used prior to my time by Bergman & Company in their chandelier sockets and was to a certain extent successful by reason of their employing very fine threads and on a very small socket. When this method was employed, however, on a standard socket with rolled threads, no matter how fine we made them, it was to a very large extent liable to work loose the same as the threaded ring did, and permit parts of the

socket to drop apart. Another form was to make the threaded member which engaged with the threads on the cap separate from the shell screw, and screwing it against a shoulder on the shell similar to a pipe union used by the plumbers. This entailed additional expense for the reason that the additional piece had to be made of a complete cap the same as the shell, and it was hard to get at when used in fixtures in a house or any other inaccessible place. It was also bad for the reason that you never knew when it was screwed home. A little obstacle of imperfection in the thread would make it seem as if it was tight when it was not. One of the nice features of Weber's socket is the fact that you know when it is engaged; it goes with a snap and has a nice feel."

Again, folio 189, on page 103, Mr. Ball shows the rut in which a number of the most learned minds in the electrical art, including himself, labored for years in their struggle with screw-fastenings, while they overlooked the simple and positive snap-shell which solved the problem:

"One of the points that we were obliged to contend with in the designing of sockets in those days was the irregularity in the thickness of the porcelain and a threaded member of some sort seemed to be necessary in order to compensate for the different thicknesses of porcelain. Any one familiar with the manufacture of porcelain goods knows something of the difficulties in making a large number of porcelain pieces of anywhere near uniform thickness, and, realizing this as one of the troublesome features to contend with, we would naturally have looked for a threaded device of some sort, and a snap member would naturally be the last thing that an inventor along these lines, knowing the conditions that he was up against, would think of. Mr. August Weber himself, during all the time that I speak of, was in daily touch with our work. During the latter part of my stay with the General Electric Company up to 1893, I was his personal assistant. My desk was alongside of his, we talked over the socket question not only from a manufacturing designing standpoint, but, from the question of cost, almost daily. The price on sockets was extremely

low, it promised to go lower. There were many competitors in the field already, and, naturally, we expected more. It was our effort, therefore, to make our designs cheaply. I very well remember going into the details of the thickness of the stock used; the methods of making the threaded nipple under the punch press instead of solid stock in the screw machine. Notwithstanding the fact that all these things were uppermost in our minds, we never made any samples or even sketches, in my recollection, of the snap socket. It was not until the year after, and, possibly the subsequent year, that the snap socket was invented. I might have added above that such men as Amandus Metzger, now deceased, Tournier, who is still working on sockets and similar devices, were working with Mr. Weber and myself at the time, and the best that we could do was resort to screws to hold the socket together."

Asked as to whether a screw-fastened socket would today be marketable, Mr. Ball says (p. 105, Q. 20):

"It would not, and, if any design was submitted to me for my criticism, in which the socket was held together with screws, I would feel just about the same towards it as I felt towards Weber's socket when it was first shown to me. I might add that I feel that the snap socket has done more perhaps than anything else to create confidence and give a sense of security and safety in handling electrical devices. Take for example the electrical flatiron, or toaster, or grill, or the numerous household devices that are put out promiscuously today, all of which, or most of which, are screwed into a socket. I doubt very much if these devices yet would be as successful as they are if it were not for the snap sockets. The continual screwing in and out of attaching plugs tends to loosen a screw-held socket, while with Weber's invention it has no effect. The screw-held socket is almost invariably loose, either shaken apart or rapidly becoming so. Imagine a woman screwing an attaching plug into such a socket to use a flatiron. I doubt very much if we would sell 20 per cent. as many flatirons today if Weber had not made his improvement on the socket. In the early days sockets were largely used for lamps. A lamp was screwed in and stayed in for several hundred hours.

> Today sockets are used for all kinds of devices. Weber's invention, therefore, can be looked upon as a fundamental one and of a pioneer nature, one that tended towards the success of apparatus following."

As to whether similar catch-fastenings on matchboxes and paint-cans would be a safe criterion as to the fastening for a lamp-socket, Mr. Ball says (p. 106, Q. 22):

> "No, every one was familiar with snap fasteners of many forms, but they always had a sense of insecurity associated with them. Take for example a glove fastener, easy to put on, easy to take off. Weber's snap had distinctive points of merit in it in that it was necessary to take it apart with a deliberate intent, and, up until that time it was so constructed that it was impossible of itself through any vibration to jar apart."

On the next page he points out the differences in the conditions with which the mechanics in these different arts are confronted, showing clearly that it was an electrical and not a "tin-can" problem.

The names of Ball, Metzger, Tournier, Donnelly and Gengenbach are familiar to all connected with the electrical art; and before the invention of the Weber snap-shell socket, this very problem of shell-fastenings had been worked upon for years, not alone by the ordinary skilled mechanics, but by these most highly trained experts in the art; and the best they had been able to devise was a screw-fastened case.

The fact that the screw-and-slot fastening *remained* the standard from 1893 to 1905, shows how completely these experts were baffled.

Other witnesses, namely, Robb and Sullivan, give the history of the snap-shell socket from the view point of the chandelier and fixture manufacture, Mr. Robb being secretary and general manager of Mitchell, Vance & Co., the largest manufacturer of electric fixtures in this country, using annually one hundred and fifty thousand lamp-sockets; while Mr. Sullivan is superintendent of the Black & Boyd Manufacturing Company,

electrical fixture manufacturers, using about eighty thousand sockets a year.

Both of these witnesses show how completely the snap-shell socket has superseded the screw-and-slot Lange-type socket. Both tell of the insecurity and danger of the screw-and-slot fastening and how these defects are overcome by the snap-shell; and, what was probably of equal importance to them, the great saving of time and labor accomplished by the snap-shell in mounting the sockets within the husks of chandeliers.

Most of the large electric fixtures in public places are provided with ornamental husks which inaccessibly enclose and hide from view the socket and more or less of the lamp-bulb.

In mounting the screw-and-slot fastened socket in such a husk, it was necessary to provide diametrically opposite holes through which a screw-driver could be inserted to set up the side screws of the socket; or to tediously set up these screws by means of pliers. As a result, a great many of these husk-enclosed sockets were only partly, or insecurely fastened together.

If the design of the husk did not provide for these apertures the fixture manufacturer in many cases drilled the holes regardless of, and marring, the design.

As to how he came to take up the snap-shell type of socket, Mr. Robb says (p. 75, Q. 12):

> "We were having so much trouble caused by the weight of the shade fastened to the front of the sleeve of the socket pulling the cover off, then the sleeve would fall down on the floor."

And as to the advantages of the snap-shell, he says (Q. 13):

> "When the new socket is used in a husk, it does not require two holes in the husk, one on either side to get at the binding screw, and the trouble caused by the sleeve dropping off was eliminated, the snap catch being more reliable."

Mr. Sullivan was skeptical when the Weber agent first showed him the snap-shell socket, but he states (p. 78, Q. 14):

> "After he had seen me two or three times, I gave him a small order to try the merits of the socket, and after giving it a thorough trial and learning that it had merits the other sockets heretofore in use had not, I then began to give him orders for snap-shell sockets."

As to the advantages of the snap-shell socket over the screw-and-slot fastening, he says (p. 78, Qs. 15, 16):

> "In the manufacture of ornamental fixtures for private residences and fixtures of that order the sockets were sometimes in a case or covering and in order to place the socket then in use we found it a great difficulty in tightening the screw in the side of the socket, this was obviated by use of the no-screw or snap-shell socket."
>
> "We found that by the use of the snap-shell socket the shells would be held more securely in place, as vibration many times causes the side-screws to become loose and the socket shells to fall apart."

And another witness, Mr. Hight, had had practical experience in every branch of the business, having been in the electrical contracting business, electric jobbing business, and the manufacturing of electrical materials; and while connected with these different branches of the business, he himself was frequently called upon to install and repair lamp-sockets.

Prior to the introduction of the Weber socket, he had used nothing but the Lange-type socket.

The reasons for the complete supremacy of the snap-shell socket are given by Mr. Hight as follows (p. 69, Q. 11):

> "All sockets previous to the time that the Weber socket was put on the market were the sockets with screws. Immediately following the advent of the Weber socket it became popular with fixture houses and contractors, also engineers who had in charge the lighting devices in public buildings and places where they had their own electric light plant. The fixture men appreciated the arrangement of holding the two parts of the

shell together, because of the fact that it was possible for them to install the sockets on fixtures much more easily, and especially in cases where it was necessary for him to install the sockets in a socket cover or husk. These socket covers or husks very often acted as shade holders and were also a decoration to the fixture. It was practically impossible for the fixture manufacturer to install the sockets with screws, in these socket covers or husks, without going to the trouble of drilling holes so as to be able to set up the screws on the sides of the old sockets; where, with the Weber socket, it was only necessary to push the shell into the cap and the two parts of the shell were locked securely in place. The engineer in isolated plants and public buildings at once appreciated the snap shell socket because of the fact that in many places where sockets had been used in connection with extension cords and such devices the shells would become loosened and many times lost. Then the current-carrying parts of the socket would be exposed and a person using them would be very apt to get a shock in screwing in the lamp or a plug. This difficulty was overcome by the snap shell socket, owing to the fact that there were no screws to work loose from vibration or constant handling, and these shells would remain in position under almost any use. In case of the electric contractor, who was continuously doing work in factories and mills, the snap shell socket was a great thing for him because of the immense vibration or the great amount of vibration in these factories and mills, especially in cotton mills, woolen mills, etc. In these places the vibration would work the screws loose, the shades would drop down; and, in many places, caused a great deal of trouble. The snap shell socket overcame these difficulties, so that at the present time they have very little trouble with the shells coming apart because of vibration or constant handling. The jobbing house which previous to the time of the Weber socket coming on the market had carried in stock and sold nothing but sockets with screws, immediately found that there was a demand for the snap shell socket. This demand coming from fixture manufacturers, contractors and isolated plants, its stock therefore went through somewhat of a change, and, at the present time and even for the pas

three years, the jobber has carried very little of any other kind of socket than the snap shell. Today his stock is composed wholly of sockets with snap shells. The fixture manufacturer who previous to the time of the Weber socket coming on the market had used nothing but sockets with screws, today practically uses nothing but snap shell sockets. This is true also of the contractors and isolated plants."

In answer to Q. 13, p. 70, Mr. Hight tells some of the methods employed by Weber's competitors to discredit the use of the snap shell:

"At first the competitors paid very little attention to the Weber socket; but, after we had been able to demonstrate this socket to some of the more important fixture manufacturers, engineers and contractors, they started in to try and show these people that a device in the way of a socket the two parts of which were held together by cut metal edges, was not a success. Many times I have known of representatives of the competitors of Weber abusing the Weber socket by bending the metal into such forms that the catches would not hook in place and thereby would pull off easily. I have also known of them bending the hooking devices themselves so that they would easily let go, and in every way possible, they tried to discredit the holding qualities of the snap shell. One of the manufacturers produced some literature in the way of a flyer, stating that any socket the two parts of which were held together by any other means than the screws, was not and could not be a success."

Mr. Hight tells (p. 71, Q. 18) how the General Electric and other companies at first employed the snap-fastenings in minor form as an adjunct to the screws and slots (Ex. 9386 socket) apparently hoping thus to minimize their value and cast discredit upon them. The 3386 socket, however, failed to satisfy the demands of the trade; and to-day the entire output of sockets has the snap-fastening only.

In answer to Q. 21 (71) Mr. Hight shows how the Weber snap-shell, in addition to revolutionizing the shell-construction

of the entire line of lamp-sockets, has also revolutionized the general construction of one type of socket known as the wall-socket, a modern sample of which appears as Exhibit Snap-shell Key Wall-Socket. Formerly the wall-socket had the screw-and-slot fastening with a one-piece porcelain base upon which were mounted metal pieces to receive the screws in the same manner that the yoke in the Lange-type socket receives the screws; and Mr. Hight says:

> "It was absolutely impossible to change a wall-socket from a key to a keyless or pull-socket."

How conveniently the interior of the wall-socket having a snap-shell can be changed from a key to keyless or pull will be seen from inspection of the Exhibit "Snap-shell Key Wall-Socket."

As a result Mr. Hight states that to-day "practically all wall-sockets are made with a snap-fastening".

The witness, Ball, showed how the snap-shell had led to the higher development of various household electrical devices (p. 105), for which reason he looked upon the Weber invention as a fundamental one; and here again in the case of the wall-socket, we find that the snap-shell has led to an improved entire reconstruction of the case-enclosed porcelain base, which is thereby made interchangeable.

The snap-shell also made possible what is known as the Universal or Multicatch type of socket, the sleeve and cap of which can be snapped together in practically any relative rotary position, which is a great convenience in chandeliers and husk mountings.

Weber, the patentee of the patent in suit, is the one who by his invention there set forth made this most substantial contribution to this art.

## II.

## The Respondent Infringes.

The question upon which infringement turns involves but one point, and that one point is sharply defined by the opposing opinions of the Circuit Courts of Appeals of the Third and Second Circuits.

The claims in issue specify that the sleeve and cap of the device shall, in locking, be moved "telescopically". The Third Circuit Court of Appeals held that this limited the claims to an arrangement involving a straight, sliding movement only. The Second Circuit Court of Appeals held that infringement existed even if, in addition to a longitudinal sliding movement, there is also employed a slight rotational movement.

That is the whole question.

And it is interesting to note that this difference in view did not result from any difference in the proof before those two Courts. Each Court had before it the same facts in reaching the differing conclusions.

The Third Circuit Court of Appeals had before it in the present case the record, briefs and the opinion of the Second Circuit Court of Appeals in the Cutler-Hammer case (256 Fed. Rep. 314), in which that Court after citing with approval the decision of Judge Davis sitting in the District Court in the present case, held that "the Weber invention is a positive lock for the engagement of the sleeve and cap of lamp sockets as distinguished from *any and every* variety of *friction* device", which opinion was rendered after the attention of the Court had been particularly called to the feature of the rotational movement in the respondent's socket and to the *obiter* statement which had been made by Judge A. N. Hand in his opinion in the District Court in the Cutler-Hammer case, which statement is quoted in the opinion of the Third Circuit Court of Appeals in the present case. The Third Circuit Court of Appeals also had before it (although the opinion would indicate otherwise) the Connecti-

cut socket and the opinion of Judge Thomas in the District Court in the Connecticut case (257 Fed. Rep. 429), which was thereafter affirmed by the Second Circuit Court of Appeals.

The Second Circuit Court of Appeals had before it in the Connecticut case the respondent's socket, the whole of respondent's record, the decision of the Third Circuit Court of Appeals, here complained of, reversing Judge Davis on this point of rotational movement, the petition for rehearing in the present case, and the information that the petition had been refused without opinion by the Third Circuit Court of Appeals.

The opinion of the Second Circuit Court of Appeals in the Connecticut case is we believe free from error, and correctly expresses the law, and correctly interprets the scope of claims 1 and 4.

There is, indeed, every reason why the respondent's device should be held to be an infringement.

What is respondent's construction? And what does "telescopically" mean, both in its ordinary acceptation and as used in the patent in suit?

There is no doubt or question but that the cap and sleeve of the respondent's device automatically and positively become locked to each other by reason of the mere act of bringing the cap and sleeve together to their ultimate position, and can subsequently be disengaged only by positively depressing a portion of the sleeve before pulling the cap and sleeve apart. The act of bringing the parts together, from which the automatic and positive locking results, consists in bringing the open end of the cap opposite the open end of the sleeve, and then moving the parts toward each other and continuing this movement so as to cause the end of the sleeve to slide inside of the end of the cap, and also give a slight rotational or twisting movement to one part with reference to the other. Unquestionably, the sleeve is caused to enter and "nest in" the cap.

This is precisely what is meant by "telescopically" both in its ordinary sense and in the sense in which the patentee used it. This will appear from a number of considerations.

**1. In its ordinary, generally accepted sense** the word "telescopically" at once brings to the mind the operation of adjusting an ordinary spy glass or small telescope to the eye. Probably all of us can distinctly recall using such a telescope from time to time and focusing it on the object to be observed by extending or shortening the instrument. And probably all of us can recall that, when first taking up the telescope, we pulled the parts straight out, so that each section slid part way out of its adjoining, larger section; then, when the rough adjustment had thus been made, we would, for the finer and more accurate adjustment, slide the sections slowly further apart or together, while at the same time giving a slight turn to one of the sections so that the parts would not "jump" and go further than we had intended.

Obviously we were moving the sections of the spy-glass "telescopically" whenever we were moving them into or out of each other, and the movement did not cease to be telescopic when, in addition, there was a rotary movement (see, in this connection, the Brashear and Thomson affidavits, pp. 436, 438).

So the idea involved in "telescopically" applying one part to another does not *ex*clude but, on the contrary and within the range of our ordinary knowledge, *in*cludes the idea of a slight rotary movement also.

**2. The patentee used the word in this same sense,** as appears on the face of the patent in suit. As was said by the Circuit Court of Appeals for the Third Circuit in its opinion (262 Fed. Rep. 771):

> "The incandescent electric lamp socket in most general use before and at the time of Weber's invention was made in two parts, one sleeved over the other and united by a bayonet joint. The members were pushed together; then by a rotary movement of one member upon the other, the stud entered the transverse part of the slot and locked the two parts, so as to prevent separation by longitudinal movement."

That socket consisted of two brass shell members, one sliding over the other by both a longitudinal movement of the members and a rotational movement to bring the parts to the position in which they were to be connected.

Now, if that was a "telescopic" movement, then of course the respondent's members engage with a telescopic movement.

That the movement in that old structure *was* a "telescopic" movement, as that word is used in the patent here in suit, is shown at line 35 of page 1 of the patent in suit (p. 245). Weber is here defining not what his invention is, but what it is applicable to; and he says that it is applicable to *various telescopically-connecting* members, and is especially adapted for use "in the *telescopically connecting* cap and sleeve members of incandescent electric lamp sockets". Obviously, the patentee, in here describing the kind of structure to which his invention is particularly applicable, had in mind the incandescent electric lamp socket which was in most general use at the time of the invention, namely, the one with the bayonet-joint in which there were two members, one sliding over the other. It happened that, in that old form, one member had, with reference to the other, both a longitudinal and a rotary movement in coming into connecting position, but that did not prevent the connection from being telescopic, according to the definition of the patent in suit.

To the patent in suit it is immaterial whether in making this telescopic connection the movement is all longitudinal, or partly longitudinal and partly rotary; the construction is such that the parts may be locked by either movement. The invention and novelty resided not in a new movement but in making the locking action a positive and automatic one—that is no screw is required for holding the parts in their final position (as was the case with the old bayonet joint); but the mere act of bringing the parts to their final position automatically produced the positive engagement.

**3. The patentee's meaning is confirmed by expressions in his later patents** in which, also, he uses

the word "telescopically" as including a rotary movement. Thus his patent No. 1,136,383 (p. 440) shows a situation in which the parts necessarily have a sliding movement with reference to each other, and then a rotary movement to come to locking position; and, in claim 2, is included

> "Means for guiding the members *telescopically* together by a *movement having a rotational component.*"

When the patentee wished to *confine* the telescopic movement to a straight line movement, he provided means, as in his patent No. 916,812 (p. 686), to "*insure the alinement* of said projection and recesses during telescopic application to each other of the sleeve and cap" (p. 2, line 59, of that patent).

But in the patent in suit no such confining means are provided.

The patentee's use of the word "telescopic" or "telescopically", throughout his series of patents shows conclusively that his own definition of the term does not at all exclude a movement of rotation such as the respondent uses.

**4. The nature of the invention is not such as to require a limitation of the meaning of the word "telescopically",** but quite the contrary. As was rightly said by the Circuit Court of Appeals for the Third Circuit, "the chief object of Weber's invention was to provide an automatic and positive lock connection between the sleeve and cap of the socket" (262 Fed. Rep. 771-2). His invention—the substantial and real contribution that he made to this art, as found by all of the courts—resided not at all in any way of sliding the parts together different from those of prior devices which had sleeves moving over one another, but in the thing that was accomplished by that movement. In the prior Oetting patent (p. 356) movement of the parts over one another, no matter in what direction, could not alone effect a positive locking—that movement had to be supplemented by manual pressure upon the locking tongues or catches.

Nor could movement of the two parts over one another, no

matter how moved, in the prior Kenney patent (p. 370), effect the positive locking,—for in that instance there was frictional engagement only, and nothing positive at all about the locking.

Weber, by mere movement of the parts over one another, obtained a positive lock—as distinguished from Kenney; and without manipulation of the catches—as distinguished from Oetting.

The gist of the Weber invention is that he obtained this positive locking merely by the movement of the sleeve and cap; and there is nothing in the prior art which limits that movement to any specific kind or direction, provided the parts move over each other as they do in other telescopic structures.

**5. Nor is any limitation imposed by the proceedings in the Patent Office** resulting in the issue of the patent in suit. No amendment whatever was made, during the prosecution of the Weber application, which bears upon the meaning of the word "telescopically". Nor, as we shall point out in a moment in considering specifically the opinion of the Circuit Court of Appeals (p. 412), were any arguments made limiting or even defining that term; the arguments merely pointed out that the prior structures did not provide for automatic and positive locking by the mere movement of the parts over each other—they did not *by any kind* of a telescopic movement, whether, "straight", or straight plus a rotational movement, attain Weber's result.

Weber did not, by any proceedings in the Patent Office, or otherwise, disclaim *any* form of catch which terminated so abruptly as to make a positive lock and required to be released by manual compression of a slotted sleeve. He did distinguish from, and in that sense disclaim, a non-automatic catch, and a catch which afforded only frictional resistance to unlocking for separation of the parts. Originally, the only reference in claim 4 to the termination of the projection was in the words "terminating abruptly" (p. 235), and the only reference to release was by the words "by compression of said slotted sleeve".

Both of these expressions were indefinite in that the degree of abruptness of the termination of the projection was not set forth with sufficient clearness to mean a *positive* lock which could be released only by manual compression of the sleeve; and the indefinite expression "by compression of the slotted sleeve" (not characterized by the word 'manual') might apply to the Kenney patent, because in releasing the Kenney device by rotating the projection over the bridge F, that portion of the sleeve-wall is compressed, *not manually* but by the projection itself riding over it.

It has not been the policy of the Courts to carry the doctrine of estoppel by self-imposed limitations any further than the conduct and intent of the patentee necessarily requires; and we do not think it has ever been held that because an applicant has, necessarily or otherwise, limited or restricted his claim in certain features, it must be held restricted in all of its features to literally the construction shown in the drawing and described in the specification.

Acquiescence in the rejection of a claim on references cited in the Patent Office, and the acceptance of a patent on an amended claim, estops the patentee from maintaining that the amended claim covers the devices shown in the references and that it has the breadth of the claim rejected; but *this is the limit of the estoppel.*

The patentee is not estopped from thereafter antedating the references as prior art, or from invoking the doctrine of equivalents for the amended feature beyond the domain of the cited references.

The law, as summarized in the last two paragraphs, is well established, as shown by the following cases, among others:

*National Hollow B. B. Co.* vs. *Interchangeable B. B. Co.*, 106 Fed. Rep. 693 (713-14), 8th C. C. A.

*Thomson-Houston Co.* vs. *Lorain Co.*, 110 Fed. Rep. 654; affirmed 117 Fed. Rep. 249; 2nd C. C. A.

*Seeger Refrigerator Co.* vs. *American Car and Foundry Co.*, 171 Fed. Rep. 416; affirmed by 3rd C. C. A. 178 Fed. Rep. 278; cited and followed in the Southern District of New York, 178 Fed. Rep. 283, and in the District of Minnesota, 178 Fed. Rep. 567, in subsequent suits on the same patent.

*Scaife* vs. *Falls City Co.*, 209 Fed. Rep. 210, 6th C. C. A.

*National Tube Co.* vs. *Mark*, 216 Fed. Rep. 507 523, 6th C. C. A.

*Phillips* vs. *Faber Sulky Co.*, 173 Fed. Rep. 1021, 2nd C. C. A.

*Wayne Mfg. Co.* vs. *Benbow Mfg. Co.*, 168 Fed. Rep. 271-279, 8th C. C. A.

*Cooper* vs. *Otis Co.*, 166 Fed. Rep. 861-864, 1st C. C. A.

The claim as it now reads, brings out clearly the positive lock. Under the decisions to which we have referred, any bevel which operates in substantially the same way to perform the same function and result as the bevel formed by displacing the sheet-metal wall, is the full equivalent of the bevel called for by the claim; and any termination of the projection sufficiently abrupt to form a positive snap-lock which can be released only by manual compression of the slotted sleeve is the full equivalent of the abrupt termination formed at the slit referred to in the claim.

The Courts have uniformly so held, and the Circuit Court of Appeals for the Third Circuit did not question but that the respondent's device infringes in these respects. The adverse decision was with reference only to the meaning of "telescopically".

**6. The dictionary definitions also show that "telescopic" does not exclude rotational movement, but quite the contrary.** The Standard Dictionary definition of the word "telescopic" is:

> "Telescopic: 4. Mach. Having tubular parts or sections sliding *or working* within or over one another."

We have italicised "*or working*" in view of the use of the word "working" to mean a screw-movement in the following definitions of "telescopic-jack":

> "Telescopic Jack. A screw-jack in which the lifting head is raised by the action of two screws having reversed threads, one **working** within the other, and **both** sinking or **telescoping** within the base. By this differential arrangement greater power is obtained."
>
> *Knight's American Mechanical Dictionary*, p. 2524.

This definition is given word for word also in

*Universal Dictionary*, Vol. 4, p. 4643;

*American Encyclopædic Dictionary*, Vol. 4, p. 4022.

And it obviously includes a rotational movement within a telescopic movement. Other definitions are as follows:

> "Telescopic. 4. Capable of being extended or shut up like a spyglass; having joints or sections which slide one within another; especially, in *mach.*, constructed of concentric tubes, either stationary, as in the telescopic boiler, or movable, as in the telescopic chimney of a war-vessel, which may be lowered out of sight in action or in the telescopic-jack, a screw-jack in which the lifting head is raised by the action of two screws having reversed threads, one **working** within the other, and **both** sinking or **telescoping** within the base—an arrangement by which greater power is obtained." *The Century Dictionary*, P. 6218.
>
> "Telescopic, Telescopical: 4. Having the power of extension by joints sliding one within the other, like the tubes of a pocket telescope; especially in *mach.* constructed of concentric tubes, either stationary, as in the telescopic boiler, or movable as in the telescopic chimney of a war vessel, which may be put out of sight in action by being closed **endwise**, or in the telescopic jack, a screw-jack in which the lifting head is raised by the action of two screws having reversed threads one **working** within the other, and **both** sinking or **telescoping** within the base." *The Imperial Dictionary*, P. 322.

"Telescope-jack. Mech. A bottle-jack the male screw of which (*a* in the illust.) is a **telescope-screw** in which works another (solid) male screw (*b*). *Webster's New International Dictionary (Illustrated)*, P. 2123.

"Telescope-screw. Mech. A screw consisting of a cylinder threaded internally and externally. *Webster's New International Dictionary*, P. 2123.

"Telescope, v. * * * (*b*) intr. To slide, run or be driven one into another (or into something else); to have its parts made to slide in this manner (see quot. 1882, s. v. *telescoping* below); to collapse so that its parts fall into one another (quot. 1905). 1877 Knight Dict. Mech. 2524/2. Two screws—one **working** within the other, and **both** sinking or **telescoping** within the base." *The Oxford (Murray's)* Vol. IX, p. 152.

In addition to these Dictionary authorities, we find that the use of the word "telescope" or "telescopic" is commonly used in patent specifications with the approval of the Patent Office, in referring to a movement having a rotational component.

Patent No. 390,605, to Joyce, October 2, 1888, for a Screw Jack (p. 445) shows the type of jack described in the above-cited dictionary definitions as a telescope or telescopic-jack. At line 7, page 1 of this patent the patentee says:

"My invention relates to that class of jacks commonly called *telescope-screw-jacks*."

Patent No. 389,475, to Joyce, September 11, 1888, for Telescopic Jack (p. 443) shows the same general construction of screw jack. The patentee says, line 7:

"My invention relates to a means for operating a telescopic screw-jack."

Patent No. 385,468 to Mayfield, July 3, 1888, shows a Dental Operating Chair having a hollow interiorly screw-threaded base, containing a nest of two telescope screws and a center screw-post. The specification states beginning at line 28, page 3 (p. 449):

"When the seat is lowered to the position shown in Fig. 2, the hollow screws are fitted one within the other,

and when the seat is raised to the position shown in Fig. 1 the screws are extended *one above the other, the said screws being telescoped.*"

These are referred to in claim 1 of this Mayfield patent as "the telescopic nested elevating screws"; and in claim 2, as "the telescopic elevating screws supported on the base", and in claim 4 as "the telescopic elevating screws".

Patent No. 801,363, to Youlten, November 14, 1905, shows a telescopic sight for rifles and other arms, in which the focusing tubes are telescoped by a movement having a rotational component caused by means described as follows, line 99, page 1 (p. 454):

> "*r* is a plate fixed spirally on the inside of the tube *l*, and *w* is a piece attached to the inner end of the sliding tube *p* and so cut away that it takes over the edges of the spiral piece *r*."

The operation is described at line 43, page 2, as follows:

> "The tail *r* is carried clear of the head of the bolt *k* through the *rotary motion imparted to the sliding tube p* on account of the piece *w* taking over the edges of the spiral piece *r*."

Each of claims 11 and 12 is for "a telescopic sight for rifles and other weapons comprising inner and outer tubes, and means * * * for imparting a *rotary motion* to one of said tubes *when the focus is changed.*"

From the foregoing considerations, it is, we submit, entirely clear that the respondent has secured all of the benefits of the invention in suit and cannot evade liability by reason of also using, in its telescopic movement resulting in automatic positive locking, a movement of rotation, such a movement being nothing foreign to "telescopic" movement as that term is commonly understood and as it was used by the patentee in his specification and claims.

This automatic snap-lock feature of claim 4 is present in all of respondent's sockets, both key and keyless.

If, as the Courts have uniformly held, this claim 4 is entitled to a fair range of equivalents, or to any range of equivalents at all, infringement would seem too clear for argument, for the only differences in construction are differences in form while every feature of function and manner of operation are retained.

The locking in the respondent's socket is automatic due to the bevel formed by bending in the corner of the sleeve adjacent to the key slot or other slot, which renders the sleeve manually compressible; and this automatically accomplished locking is positive, and just as positive as it is in the Weber device—in fact Mr. Freeman considers it more positive (Qs. 74-75, p. 300).

The respondent's riveted-on post is the projection called for by the claim, and it has the abrupt termination—as abrupt as that of Weber's slit formed projection, or more abrupt as Freeman says; the bevel has been transferred to the other member of the casing where it has precisely the same function of enabling the one member of the casing to ride over the other member having the projection.

The claim is not limited as to which member of the casing shall have the projection and which the recess; the specification shows that the projection may be on the sleeve and the recess in the cap, or the projection may be on the cap and the recess in the sleeve—both arrangements are described and illustrated, one in Fig. 2 and the other in Fig. 3 (p. 214). The reversal or transfer of structural features from one member of the casing to the other is entirely unimportant.

For like reasons we do not see how it can be fairly disputed that the respondent's keyless sockets infringe claim 1. Indeed the respondent's expert admits both the validity and infringement of claim 1 as follows (p. 162):

> "x-Q. 20. Without regard to whether so doing constitutes patentable novelty or invention, or makes a combination or merely an aggregation, which I understand are matters for the court to pass upon, is it not a fact that so far as is shown by the prior art considered by

you, Weber was the first to bring together in the same incandescent electric lamp socket, the two features, one constituting a sheet metal sleeve and cap adapted to automatically interlock with a snap-action, and the other constituting an introverted portion of the wall of that sleeve adapted to occupy a recess in the enclosed base of insulating material to prevent relative rotation of said base and sleeve? A. Yes.

x-Q. 21. And is it not a fact that 'Complainant's Exhibit, Defendant's Keyless Socket' has the assemblage of features stated in the last preceding question. A. Yes."

## III.

### The decision of the Circuit Court of Appeals is erroneous.

The Circuit Court of Appeals, in the present case, recognized that claims 1 and 4, in issue, had repeatedly been sustained by various other Courts which uniformly had held that Weber, the patentee, had made a very real and substantial contribution to this particular art.

The Court certainly showed a clear understanding of the objects of the Weber invention by the statement in the opinion (262 Fed. Rep. 771-2)—

> "The chief object of Weber's invention was to provide an automatic and positive lock connection between the sleeve and cap of the socket".

And also showed that it understood the gist of that invention by the following statement in the opinion (262 Fed. Rep. 774):

> "The dominant feature of Weber's inventive idea may be the interlocking without handling or manipulating the catches as in Oetting, and the positiveness of the lock which requires manual compression of the slotted sleeve, to unbolt it, as contended by the plaintiff."

This "dominant feature of Weber's inventive idea" is clearly present in the respondent's structure, and we find nothing in the opinion of the Circuit Court of Appeals to indicate that there is any thought to the contrary. While apparently recognizing the existence of this dominant feature of the invention and its presence in the defendant's structure, the Court says that

> "the protection afforded by the patent is no broader than its claims",

(to which statement no exception can be taken) and then proceeds to construe the claims as being limited to something more narrow than that which it had described as the "dominant feature of Weber's inventive idea", by giving to the word "telescopically" in the claims a meaning which, we submit, was entirely unwarranted from every point of view. That is, the Court held that the word "telescopically" means that the movement of the parts must be in a straight longitudinal line, and excludes any rotation.

The Court says, in dealing with this aspect of the case (262 Fed. Rep. 771):

> "The meaning of these words of limitation, and particularly of the words 'when telescopically applied' remains to be ascertained. For this purpose resort may be had to the state of the prior art, the file wrapper and contents of the Weber patent in suit, Weber patent No. 916,812, where the identical words are again used by him, and to the dictionaries".

Consideration of each of these sources of information shows, however, not that the words constitute the limitation found by the Court, but quite the contrary, as we believe we have shown above (pp. 23 to 31). We shall here, however, comment briefly upon the manner in which the Circuit Court of Appeals dealt with these sources of information.

The Court, after saying what we have last quoted from the opinion, referred to and properly described the socket in most general use prior to the invention of the present patentee,

namely, the bayonet-joint device in which the parts were assembled by pushing them together and then rotating. But here there was no automatic locking and no positive lock; after the parts had been brought together, they were supposed to be held in place "by friction or by the tightening of a screw". Then the Court said:

> "The chief object of Weber's invention was to provide an automatic and positive locking connection between the sleeve and cap of the socket."

This is entirely right. But the Court seemed to overlook this finding in the further discussion of the case. Certainly there is nothing in this finding which even tends to show that "telescopically" has any limited meaning.

The Court then passed to the second of the things to which it had said that "resort may be had" in determining what is meant by the words "when telescopically applied", namely, the file wrapper and contents of the patent in suit. The Court refers to the fact that certain claims of Weber's original application were rejected on the prior Oetting patent (p. 356) and on the prior Kenney patent (p. 370), and said of the Oetting device that (262 Fed. Rep. 772):

> "The parts were adapted to interlock by simply slipping or pushing one within the other as contrasted to the bayonet joint locking movement, but the lock was *not automatic*, for manual depression of the spring tongues was necessary to permit the flange of the cap to pass over the protruding lips."

Here the Court fell into its first serious confusion of thought. It stated that, in the Oetting device, the parts were adapted to interlock "by *simply* slipping or pushing one within the other", but immediately contradicted this statement by asserting the fact that "the lock was not automatic" but required manual depression of the spring tongues. So "simply slipping or pushing one" part within the other did *not* result in interlocking. In

the device of the patent in suit and in the respondent's device it does, for in both of them the mere act of nesting the cap and sleeve and bringing them to their ultimate position results in a positive and automatic lock without any manipulation of spring tongues as was required in the Oetting device.

Then, as to the Kenney device, the Court said (262 Fed. Rep. 772):

> "Kenney's lock would not operate by the longitudinal assembling of the case members; it required a rotary movement; it was *not positive* for it could become unlocked without a deliberate effort to accomplish that purpose, but it was automatic in that it could be locked without separate manipulation of the interengaging parts."

These same facts, stated in another form, are that, in the Kenney device *no positive lock* at all could be secured by the assembling of the parts by a longitudinal movement, or by a rotary movement, or by both!

So neither the Oetting nor the Kenney prior sockets "provided an *automatic and positive* locking connection between the sleeve and cap of the socket" which the Court had properly found to be "the chief object of Weber's invention". Those prior structures failed in this respect not because the movement in assembling their parts was a straight telescopic movement, or a straight movement plus a rotary movement—*no matter what character of movement was used they failed because of their other features or omissions.*

So Weber's invention, in contrast, did not reside in the kind or direction of telescopic movement employed, but in auxiliary appliances by virtue of which the old telescopic movement—straight, or straight and rotary—might accomplish a new result, namely, might in itself produce an automatic and a positive lock, which could be *un*locked or released only "by compression of said sleeve" as expressed in claim 1, or "by manual compression of said slotted sleeve" as expressed in claim 4.

But the Court did not seem to realize where its analysis of these prior patents had led. The Court proceeded to say that (262 Fed. Rep 772):

> "The patentee amended his application and filed with the amendments remarks which indicate not only his understanding of the manner in which his device differed from those of Oetting and Kenney, but also his understanding of a 'telescopic movement'. Concerning his own device he says:
>
> > 'The parts are permitted to be applied to each other by simply inserting one within the other, without manually compressing the inner member', &c.
>
> As to the Oetting construction he states:
>
> > 'The parts cannot be locked together by simple telescopic movement, it being necessary to manually depress the catches', &c.
>
> He thus distinguishes from Oetting, not in the direction of the locking movement or in the positiveness of the lock, but in the automatic feature only. In so doing he treats the direction of locking movement as identical and describes it synonymously as 'simply inserting one within the other' and as a 'simple telescopic movement'."

*No*,—these statements quoted from the file wrapper had no reference whatever to the *direction* of movement in applying the parts to one another. The point was entirely as to the locking being effected by the *mere* movement of the parts, "*without manually compressing the inner member*".

The parts are applied to each other by "simply inserting"; the reason why it is "*simply* inserting" is because it is "without manually compressing the inner member".

There is no reference whatever in this expression to the *direction* of the telescopic movement, and there is no reason for any such reference because nowhere in the file wrapper is a straight telescopic movement contrasted with a telescopic movement having a rotational component.

The second statement quoted from the file wrapper with reference to the Oetting construction is that "the parts cannot

be locked together by simple telescopic movement, it being necessary to manually depress the catches". Here is a statement of fact, followed by the reason for the fact. The fact is that in Oetting there was *absence* of locking by "simple telescopic movement" even though the movement was a straight one. The reason for the fact is that *it is necessary to manually depress the catches.*

The expressed reasons for the differentiation between Weber and Oetting are, in the case of Weber, the absence of manual compression of the inner member in coming to locking position, and, in the case of Oetting, the necessity of manually depressing the catches. Neither manual compression of the sleeve nor the depression of the Oetting catches has anything whatever to do with the specific direction of the telescopic or assembling movement; and to attribute to the words "simply" and "simple" limitational meanings as to direction of movement makes these words without point in the argument.

Immediately following these two quotations from the file-wrapper the Court says, as above quoted:

> "He thus distinguishes from Oetting *not in the direction* of the locking movement or in the positiveness of the locking, but in the automatic feature only".

which is correct; but the Court then says:

> "In so doing he treats the direction of locking movement as identical and describes it synonymously as 'simply inserting one within the other' and as a 'simple telescopic movement'."

No; the applicant did not treat of *the direction* of locking movement at all. A "simple" telescopic movement, whatever the *direction* of movement may be, will effect an automatic locking in the Weber device, but will not do so in the Oetting device, which requires a telescopic movement plus manual manipulation of the spring tongues.

The Court falls into further error in its treatment of the comparison in the file-wrapper between the Weber socket and

the Kenney socket where not even the expression "simply inserting" appears. The Court quotes from the remarks of the applicant in the file-wrapper as follows (262 Fed. Rep. 773):

> "Kenney's device is adapted to *unlock* by simply rotating one member upon another in the same manner that the parts are locked together, no manual compression of the inner member being necessary."

Here again is a statement of fact followed by the reason for the fact. The fact is that Kenney unlocks in the same manner that he locks, to the extent that he locks at all; he has *no* positive lock. That manner is "by simply rotating one member upon another"; and the reason why the unlocking can be done in the same manner as the locking, is not because of the direction of movement at all, but because no manual compression of the inner member is necessary—for no positive locking has been effected.

If Weber had a frictional lock, his socket could be unlocked in the same manner in which it was locked—automatically.

If Kenney had a positive lock, his socket could *not* be unlocked in the same manner as it was locked—frictionally.

The *direction* of movement in either case has nothing to do with the matter.

The whole argument in the file wrapper in distinguishing Weber from Kenney relates to *unlocking;* and by no fair interpretation of that argument is there any comparison between the *directions* of the movements as the parts are telescoped or assembled together. The expression "simply inserting" and "simply rotating" were at no point in the argument contrasted, and *it is significant that no advantage is claimed either in the file wrapper, or in the patent itself,* for a straight telescopic movement over a rotational telescopic movement or a telescopic movement having a rotational component.

The only advantages claimed are the automatic locking, and the positiveness of the lock; Oetting's locking was not automatic, and Kenney's lock was not positive.

The Court missed the point entirely.

Then the Court refers to the fact that in a later Weber patent, No. 916,812 (Record, p. 686), the same word "telescopically" is used with reference to a construction having a guide whereby the parts are confined to a straight longitudinal movement in telescoping together, and the Court seems to argue from this that the word "telescopically" must therefore be limited to a straight movement. But, we submit that this later patent leads to exactly the contrary conclusion.

In the patent in suit there is not a word with reference to any particular direction of movement. In the later patent the specification states at line 59, page 2:

> "To *insure the alinement* of said projections and recesses *during telescopic application* to each other of the sleeve and cap" etc.

The patent in suit concededly had no means "to insure the alinement during telescopic application"; and is it not perfectly clear that this feature of the invention of the later patent was to *compel* the parts to move in alinement during telescopic application by means of the guiding mechanism shown in the later patent and forming the subject of a number of claims therein? If the object of the later patent was to *insure* alinement in telescoping, does it not show conclusively that in the patent in suit the parts were likely not to keep their alinement in telescoping, but that even if they did not do so, the movement was nevertheless considered telescopic?

We have considered both this patent and another interesting Weber patent at pages 23-25, *supra*.

The Court then passed to the last of the things to which it said resort may be had in determining the meaning of "telescopically", namely, the dictionary definition. The Court quotes from the Standard Dictionary the following definition of "telescope":

> "To drive together so that one slides into another like the sections of a spy-glass or small telescope; to crush by driving together into or upon; *to move like the sliding portions of a spy-glass in closing.*"

And, as we have noted above, "to move like the sliding portions of a spy-glass" in securing accurate focusing without a twisting or rotative movement is almost impossible, as almost anyone knows who has ever operated such an instrument. This is further set forth at pages 436 and 438 of the Record.

And, as we have shown at pages 28-30, *supra*, the dictionaries are replete with definitions of telescopic movement which include, in that term, a rotary as well as a straight line movement.

Surely the dictionaries do not support the conclusion of the Court that a "telescopic" movement is limited to "a direct onward or forward movement in contradistinction to * * * rotary motion".

Finally the Circuit Court of Appeals for the Third Circuit considered that it found some authority, for its construction of the word "telescopically", in the decisions of other Courts which had passed upon the patent here in suit. In this, the Court misunderstood and misinterpreted the prior decisions, in some instances confusing descriptions of structures, with findings as to the essentials of operation.

The first quotation from prior decisions is from the first opinion of Judge Rellstab in the *Union Electric Case*, 226 Fed. Rep. 482. This at a later hearing, after the argument of the present case in the District Court, was called to the attention of Judge Rellstab who emphatically denied any intention of so restricting the claims.

Reference to the Petition for Rehearing (pp. 429-431) shows that counsel called Judge Rellstab's attention to the identical statement quoted by Judge Morris; and, after stating to Judge Rellstab that the Freeman company's counsel had argued before Judge Davis that by the statement Judge Rellstab had limited the claim to a straight telescopic movement as distinguished from a bayonet-telescopic movement counsel said,—

"I don't think you intended to pass on that".

To this Judge Rellstab replied:

> "No, I didn't pass on that. It may be simply a matter of discussing it".

Counsel then said,—

> "You weren't interpreting the claim and limiting it in that way".

To which Judge Rellstab replied:

> "My interpretation of the claim comes later".

Counsel continued,—

> "No point like that was before you in that Case (*Union Case*)".

and Judge Rellstab replied,—

> "No, and it isn't before me now".

A certified copy of the report of this hearing was before the Third Circuit Court of Appeals, but seems to have been entirely overlooked.

It is unnecessary now to comment on the inferences which the Court sought to draw from the decision in the *National Gas Case* and the *Cutler-Hammer Case* in the Second Circuit, for, since the decision of the Circuit Court of Appeals for the Third Circuit, the Court of Appeals for the Second Circuit has authoritatively stated that it did not agree with the Third Circuit, having done this in the *Connecticut Case*, reported in 263 Fed. Rep. 583.

We submit that the Circuit Court of Appeals was clearly wrong in the conclusion which it reached in this case.

The patentee of the patent in suit has, as all of the Courts have found, made a real and substantial contribution to this art, which has gone into very extensive use. It has displaced the prior structures which did *not* automatically and positively interlock by the mere act of bringing the parts together to the position which they are to occupy when in use.

The respondent's device has the very characteristic which made the Weber socket popular and distinguishes it from the prior art. That distinction was not at all based upon the direction of movement in assembling the parts; both a straight telescopic movement and one having a rotational component were old. The new thing was to cause that movement alone, and without manipulation of spring catches, etc., to produce an automatic lock and, at the same time, a positive as distinguished from a frictional lock.

The respondent uses that new thing, and clearly infringes.

## IV.

## A consideration of the various prior patents emphasizes the character of the Weber invention.

The prior patents in this record are the same ones which have repeatedly been before the Courts in the series of suits on the present patent—and the patent has uniformly been sustained by all of the numerous Courts which have had it under consideration.

In fact, a study of the many unsuccessful efforts of the prior workers in this art serves merely to emphasize that success was by no means easy of attainment, and that the patentee of the patent in suit, in devising the ultimate and now universally adopted device, has solved a real problem and made a real invention. The prior efforts both emphasize and depict the character of that invention.

The most prominent of the other workers in this art were **Oetting** and **Kenney** to whose patents we have already referred. Their patents are not really a part of the prior art at all, for, as we point out later (pp. 49 *et seq.*, *infra*), Weber's invention antedated them. But they are interesting as furnishing a contrast to what the Weber invention was.

The Oetting patent (p. 356) is discussed at page 33, folio 58 of the Record, and the Kenney patents (pp. 370, 373) are discussed at page 31, folio 55. We have considered these patents at pages 25, 35-39, *supra*. The Oetting construction is admittedly one in which the parts do not lock automatically by the mere, simple act of bringing them together, but requires, in addition, manipulation of catches. The Kenney construction is admittedly one in which the parts do not *positively* lock at all, but are held together only by friction. The lack of the *automatic* lock in Oetting was serious and very disadvantageous, because sockets are frequently assembled in locations in which, because of lack of space, it is difficult to manipulate catches and, if they were not manipulated, the Oetting parts would not be locked and might come apart in use. The lack in Kenney of a *positive* lock, meant that the parts were never firmly locked and were apt to be displaced in use when screwing a lamp bulb into or out of the shell. Such a friction lock as Kenney had is admitted by the respondent to be very disadvantageous (p. 298, A-Qs. 58-67).

Weber solved both of these difficulties, not by introducing complications, but by reverting to extreme simplicity. The ideal socket should be easy to lock and difficult to unlock. Weber made the locking easy by causing it to result automatically from merely bringing the parts together. And he made the lock a positive latch, so that the parts could be opened only by, with difficulty, first intentionally displacing that latch. And all this was done with a minimum of parts and with extreme simplicity of construction—a most necessary feature in little devices of this kind.

That this means invention, and of a high order, cannot be doubted.

The **British Kenny** patent (p. 383) further emphasizes this. While the title of this patent, "Holder for Electric Glow Lamp", would locate it in the same art with devices of the kind in controversy, it is designed for an obsolete type of lamp not used in this country; and its construction calls for the use

of thick, heavy brass parts instead of the extremely thin sheet-metal which is the only material employed in this country for the shells of lamp-sockets. The construction would obviously be inoperative if made of the present standard thin sheet metal, because long tongues, like tongues 8, if formed of such extremely thin metal, would have practically no life or resiliency or holding force. Even with the heavy tubing shown in the drawings of this British patent, either a separate ring, or the sleeve 3, of the shade-holder is employed to enclose the locking tongues 8, and *hold* them in locking position. This is referred to at the middle of page 396.

It is adapted and intended to be released by *first removing the ring or sleeve of the shade holder*, and then rotating the sleeve upon the cap in a somewhat similar manner to the operation of the Kenney U. S. patents. It has no slotted sleeve; it is not released or unlocked by compression of a slotted sleeve; and it does not form a positive lock but it must be reinforced by the enclosing ring or sleeve of the shade-holder. This British patent shows another form of catch employing tongues A on the lamp-holder adapted to enter pockets or recesses B in the enclosing sleeve of the shade-holder; but while these catches are beveled and readily assembled, the device can be released *only by a preliminary longitudinal movement* between the interlocking members, which movement is, of course, impossible between the case-members of a lamp-socket. There is nothing about the catches A, or their manner of use which suggests the automatic interlocking of the case-members of the socket and their release by manual compression of the enclosed slotted sleeve of the case, as in petitioner's and respondent's sockets.

This Kenny British patent merely serves to add to the showing made by the various clumsy, complicated and expensive devices to which those skilled in the art had resorted to accomplish what now seems a very simple result. Such devices, instead of casting discredit upon the Weber invention, only serve to emphasize its importance and simplicity.

The *simplicity* of a construction which has been overlooked by a large number of skilled mechanics searching for years for

that very thing, is the strongest evidence of its inventive character.

Also the **Rodman** patent (p. 332) discussed at page 37, folio 66 of the Record, shows what cumbersome forms had been devised by those who had not the inventive ability to do the simple thing that Weber did. In this patent there are some spring-catches 12, which are operated by separate thumb pieces 15. These do not form a connection between members of the lamp-socket, but between the lower member of the lamp socket, and the base of an inserted lamp, as shown in Fig. 9 of the drawing. The block 32 is part of the base of the lamp, which is permanently cemented within a sleeve 33, upon which sleeve the catches 12 are riveted.

In carrying out a comparison between this Rodman construction, and the casing of a lamp socket, the sleeve 33, would necessarily be the inner of the two telescopic members; but this sleeve 33, in Rodman is not slotted or compressible; and the catches 12, are not unbolted or released by manual compression of the sleeve 33, but by the separate thumb and finger action upon the thumb-pieces 15, of the respective catches; but there is no analogy between the sleeve 33 of the Rodman patent, and the sleeve of a lampsocket casing. It would be impracticable to mount catches of this character upon the lamp-socket sleeve, because the inward movement of the catches would have to be provided for by cutting away the enclosed porcelain base, and much ingenuity would be required to employ such catches even then so as to permit the insulating base to be readily inserted and removed.

The thumb-pieces 15, form unsightly projections, which are exposed to external forces. A slight blow upon one of these thumb-pieces 15, would release the lock and permit the device to fall apart.

No such construction as the Rodman socket appears to have been known in the trade; and if ever known it is obsolete, and impracticable. The lamp, 30, of Rodman cannot be removed except as a component part of the structure which includes the member 33 and member 32, without breaking the wire con-

nections 34 and 37. The glass globe of the lamp is cemented into the sleeve 33.

These facts are all admitted by Defendant's expert (p. 164, x-Qs. 31-44).

Not only the workers in the socket art but also those in other arts failed to devise or suggest the simple and effective arrangement of the invention in issue.

Thus **Pollard** (p. 330) shows a box to which he wishes to attach a cap or cover. It is interesting to note that he does this by the Oetting arangement rather than by that of Weber. He uses two spring tongues DD each having a stud or projection *d* adapted to spring into an aperture *e* in the cap E. These tongues have to be bent inwardly by finger and thumb pressure in order to permit the cover or cap to pass over the projection *d*, which is precisely the Oetting operation.

Likewise, **Ashworth** (p. 349) has, in his match-box, the spring catch F carried by a spring-member E F shown detached in Fig. 3 of the drawing, which spring has to be manipulated.

And **Epstein** (p. 359) shows a match-box made of a built-up structure, all of the locking mechanism of which is shown in Figs. 1 and 2 as separate from the enclosing case shown in Fig. 3. It has no slotted sleeve, or any equivalent therefor, and is far removed from what Weber has done.

We have, up to this point in our reference to these other patents, been considering only the snap-action of claim 4. It will be recalled that claim 1 includes, in addition, tongues engaging the loosely enclosed insulating base. The respondent's expert admits that he cannot find this combination in the prior art. (Thus (p. 162):

> "x-Q. 20. * * * is it not a fact that so far as is shown by the prior art considered by you, Weber was the first to bring together in the same incandescent-electric-lamp socket, the two features, one constituting a sheet-metal sleeve and cap adapted to automatically interlock with a snap-action, and the other constituting an introverted portion of the wall of that sleeve adapted to occupy a recess in the enclosed base of insulating material to prevent relative rotation of said base and sleeve?
>
> "A. Yes."

Prior workers had failed entirely to create this combination. The British patents to **Edison & Swan** (p. 379) and to **Gover** (p. 381) do not show or suggest this combination, as they have neither the automatic snap lock nor the introverted tongues engaging the porcelain base. The **Mix & Genest** patent (p. 376) is in exactly the same category and respondent's expert admits that it is not an anticipation of any of the claims in issue (p. 209, x Q. 21). It has no snap-lock at all, the case members being screwed together. The same is true of the **Benjamin** patent (p. 340) discussed at page 122, folio 227.

And the **Knowles** patent (p. 338), discussed at page 30, folio 52, shows no snap action lock or automatic lock; the porcelain base is not loosely enclosed within the sleeve, and there are no tongues or other members which engage the porcelain base in the same manner as set forth in the patent in suit.

This Knowles patent does not show a modern lamp socket but one of obsolete type in which the porcelain base does not support the inserted lamp, but serves merely to connect the ends of the line-wires with terminals or contacts adapted to be engaged by the terminals on the lamp-base. Having such limited function only, the porcelain base in the Knowles patent is an oblong rectangular block, and the sleeve is indented and shaped to fit closely around the corners of this block.

Wholly aside from the combination of features set forth in claim 1, this Knowles patent does not show even a loose-fitting base supported by tongues introverted from the sleeve.

The admission of Defendant's expert that the Mix & Genest patent does not anticipate claim 1 (x Q. 21, p. 209), applies with equal force to the Knowles patent, as they are alike in their failure to show either a lamp-support mounted on the insulating base, or an automatic snap-lock.

And the **Wirt** patent (p. 346) as well as the **Perkins** and two **Marshall** patents (pp. 352, 362, 349) have no automatic snap-lock, nor tongues on the sleeve which automatically engage the loose porcelain base. In all, the ends of fastening screws enter recesses in the sides of the porcelain base to prevent unlimited rotation of that base.

Weber's invention, both as to the automatic, positive snap-lock alone, and as to it in combination with the tongues to hold the loose porcelain base, was not even foreshadowed by others working in this art. Their failures to create the now universally used socket is most illuminating as defining the real and substantial character of the invention made by Weber.

## V.

## The history of the making of the Weber invention.

We have considered the various patents to others irrespective of whether or not they were of dates actually prior to Weber's date of invention. As a matter of fact, however, the Oetting, Epstein, Marshall, Perkins, Mix and Genest and the Kenney U. S. patents are antedated by the completion of the Weber invention in January, 1898.

An insistence upon this is not necessary to our case, for, even if those patents *were* of a sufficiently early date to be prior to Weber, the latter's invention would still stand out clearly as a radically different and new and valuable contribution to the art, for the reasons which we have set forth. Clearly there is no *anticipation* of that invention. And just as clearly, it was a *real* invention.

But a consideration of the history of the making of the Weber invention is of some interest from some points of view. So we shall here review the evidence relating to it.

It has been shown by abundant evidence beyond the shadow of a doubt that Weber had every feature of the invention of his patent in suit, completed, embodied in practical form, and successfully tested and demonstrated in connection with an inserted lamp in January, 1898. It has so been held by the Courts (204 Fed. Rep. 79).

The original snap-shells have been carefully preserved and are produced from two different sources. Those produced by

the Webers had been carefully put away in their safe, while another of those produced was continuously in the possession of Ecaubert, who made the die or tool with which the shells were cut and punched to form the snap-lock and the introverted tongues.

Ecaubert's books are in evidence and the statements in the record taken from those books by Ecaubert in giving his deposition show definitely the time when the work was done. While the entries in the books are in the hand-writing of Ecaubert's daughter, who resides in Europe, Ecaubert testifies that the entries were all made under his direct supervision, and he swears positively to their correctness (p. 56). He further identifies and fixes the date of the bill for the work and the Weber check with which the bill was paid, and his endorsement on the check. The bill and check are printed at page 120. Ecaubert testifies that this is the only job which he ever did for Weber in connection with lamp-sockets, so there can be no possibility of his having confused this job with some other (Q. 28).

He produces the Exhibit "Weber shell made by Ecaubert" which he said had been continuously in his possession from the time it was made in January, 1898. He says that when the tool was completed it was used to make the projections and tongues on a number of shells sent to him by Weber, and this Exhibit is one of those which he retained (Q. 24).

Ecaubert is fully corroborated by his machinist, Charles Wilhelm (p. 49), who personally made the tool or die. Wilhelm talked personally with Mr. Weber in relation to this work and says Weber when he first came to him had a shell with both the snap-projections and the porcelain-engaging tongues punched out, and wanted a die that would do the same work.

Wilhelm identifies the Exhibit "Weber shell made by Ecaubert" and the Exhibit "Weber sleeve made by Ecaubert", and says they are identical with the ones made by him in January, 1898 (p. 51). He further says that when the job was completed, Weber came down and examined the shells, tried the caps onto the shells, and found them all right (p. 51).

The tool or die with which these shells were cut and punched, it will be understood, was a mere hand-tool simply to make a few shells accurately enough to demonstrate and test the invention. The shells for the market are made by machine-dies which operate very rapidly. An unsuccessful search has been made for this hand-tool and it probably was scrapped after the machines had been completed for making the sockets commercially. Wilhelm has made a drawing of the tool to explain the same, which drawing is in evidence as "Wilhelm Drawing". Referring to this drawing by reference letters he explained very clearly how the tool was made and operated (Qs. 14, 28). Wilhelm also says that this is the only work he ever did for Weber on the sleeves or cases of lamp-sockets (Q. 22).

August Weber, Jr., and John Weber, sons of the patentee, fully corroborate Ecaubert and Wilhelm, positively identifying and fixing the date of the Exhibit "Ecaubert Bill" and the Exhibit "Weber Check" in connection with the making of these shells (fols. 113-4; 146-7).

They further produce and identify the Exhibit "Weber First Hand-made Shell" which shows one locking projection formed by pressing the sheet-metal outward in rounded form and then filing away the bottom portion of the same, leaving a cut-metal edge; also the Exhibit "Weber Hand-made Shell and Cap" which shows the introverted tongues to engage the porcelain, and two snap-projections formed by slitting the wall of the sleeve and pressing the metal outward on one side of the slit, these tongues and projections being made by hand without the use of a die (fols. 109; 146).

The two Exhibits "Weber First Hand-made Shell" and "Weber Hand-made Shell and Cap" both antedate the visit of Weber to Ecaubert to order the die, which was prior to January 1, 1898, as we find from the books that Wilhelm started work upon this job on January 3, 1898.

Each of the witnesses, August Weber, Jr., and John Weber, states that not only were these Ecaubert shells successfully tested by their father in their presence but that they person-

ally tested them and found them satisfactory; that in testing they not only snapped the case-members together, but inserted a lamp in the socket in order to satisfy themselves that they would in every way meet all conditions.

The shells themselves are in evidence and they correspond in every way with the drawing and specification of the patent. If there is any difference between the form of the projections on these original shells and those placed on the commercial socket, it is so slight that it is scarcely noticeable, and it is simply by way of refinement in manufacture.

These proofs are uncontroverted.

When the Webers had decided to enter the lamp-socket field, they found their path blocked by more than 350 patents, many of which were owned by the General Electric Company which, as is well known, vigorously protects its patent property against infringements. The Webers, after having gotten a socket-fastening which was radically different from the Lange-type screw-fastening upon which there were patents, still found their path blocked by a number of patents on the interior construction of the socket.

As socket-casings are not marketed except as a component part of a complete lamp-socket, the Webers were obliged to wait until they could devise a satisfactory interior construction which they could be reasonably sure was free from infringement. They devoted to this all of the time which they could get outside the business upon which they were dependent for a livelihood, and devised a great number of interior devices. They say that time after time they thought they had succeeded in producing an interior construction which would not infringe, and took it up with their attorney only to find that there was some patent still blocking their path, and so would have to start over again. Each change in the interior it will be understood involved the making of new dies for molding the porcelain interior parts, and the making of these parts in porcelain.

But finally they did devise a satisfactory interior construction, and they then filed applications both for the snap-shell

and for the interior, and began to prepare for making the sockets in quantities and marketing them.

The patent for the interior construction No. 743,207 bears the same date as the patent here in suit.

As showing the thoroughness of the Webers' investigations of these 350 lamp-socket patents, it may be noted that when their socket came upon the market, no suit was brought against them by the General Electric Company, whom the Webers most feared; and their socket was never adjudged to infringe any patent.

The respondent sought to show by the witness Chapman that the Yost Company was more diligent than the Webers in placing on the market the socket of the Kenney patents 712,685 and 712,686; but on cross-examination it was shown that the Yost people (or Kenney) had not prepared as carefully and thoroughly as the Webers had to avoid infringement; and that this Yost or Kenney socket was the subject of suits on the Painter patent, the Sargent patent and the Perkins patent (fol. 360); that in one of these suits against a customer, Buchanan, it was held that the Perkins patent was valid and infringed (x-Qs. 65-6. See also *Buchanan* vs. *Perkins Co.*, 135 Fed. Rep. 90); and in a subsequent suit against the Yost Company, still another of its interior socket-mechanisms was held to infringe this Perkins patent (x-Q. 62. See also *Yost Co.* vs. *Perkins Co.*, 179 Fed. Rep. 511).

The respondent had an even more disastrous experience, due to his rushing a socket upon the market without proper investigation of the patent situation, and the provision of a non-infringing socket; for his Genesee Electric Co., in which he was associated with one George M. Wetmore, was put out of business by the General Electric Company in 1902 (x-Qs. 34-9), from which time Freeman remained out of the socket-business till 1908 (x-Q. 41, pp. 296-7). He says he made some models to try to get around the General Electric Company's patents, but never did anything with them (x-Q. 42).

This clearly shows that the Webers were justified in their fears, and in taking whatever time was necessary to obtain a non-infringing construction before placing their snap-shell socket on the market.

Both of the Webers stated that there was never any thought or intention of abandoning the snap-shell construction; and the fact that they spent so many months working upon an interior construction to put into the snap-shell casings shows conclusively that they believed that they had solved the problem so far as the casing was concerned.

Up to the time the application was filed for the patent in suit, it was their intention to use the snap-fastening just as shown in that application and as in the Exhibits made by Ecaubert; but before the sockets were actually placed upon the market it was suggested that it would add to the convenience of the wireman to have some guiding device by which he could aline the snap-members solely by the sense of touch when the socket is assembled within the husk of a chandelier, and in providing for such a guide they decided to make it in such form that it would afford a cut-metal stop against relative rotation, which feature is the subject of Weber patent No. 916,812.

This is of interest in the present case because the respondent now seeks to read into claim 1 the limitation of a straight telescoping movement to interlock the case-members, in order to escape infringement by reason of the slight rotational component in the assembling and locking of the respondent's sockets.

The fact is, and one reason for this later patent 916,812 is, that it is practically impossible to assemble any snap-shell socket by a straight telescoping movement without a guide; and while it makes no difference as to the automatic interlocking (that is the interlocking without manipulation of the catches as in Oetting), or as to the positiveness of the lock, or as to the necessity for manual compression of the slotted sleeve to unbolt the lock, the Webers considered it desirable to add this patented guide of patent 916,812, while most other manu-

facturers make no such provision, but let the sleeve and cap be assembled and locked indiscriminately by a straight movement or a spiral or bayonet movement as may happen.

This respondent having provided guides for a bayonet telescoping movement, seeks to escape infringement by contending that claim 4 is limited to a straight movement only.

Of course, when a separate stop against rotation is employed, more latitude is permitted and less care and accuracy are required in forming the catches.

## Conclusion.

For the foregoing reasons we submit that the Circuit Court of Appeals for the Second Circuit, in its decision in the *Connecticut* case, was right in differing from the conclusions expressed by the Circuit Court of Appeals for the Third Circuit in the present case, and that the ruling of the last named Court should be reversed.

Respectfully submitted,

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March, 1921.

Office Supreme Court, U. S.
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CLERK

# Supreme Court of the United States.

OCTOBER TERM, 1920—No. 273.

WEBER ELECTRIC COMPANY, *Plaintiff-Petitioner,*

*vs.*

E. H. FREEMAN ELECTRIC COMPANY, *Defendant-Respondent.*

## BRIEF FOR DEFENDANT-RESPONDENT.

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# Supreme Court of the United States.

OCTOBER TERM, 1920—No. 273.

WEBER ELECTRIC COMPANY, *Plaintiff-Petitioner,*
*vs.*
E. H. FREEMAN ELECTRIC COMPANY, *Defendant-Respondent.*

## BRIEF FOR DEFENDANT-RESPONDENT.

The Weber patent in suit expired November 3, 1920; therefore this case does not present any question of public or general interest demanding that the Circuit Court of Appeals' opinion be disturbed. At most, the only matter involved is whether this case shall go to an accounting. The public are no longer in jeopardy of being enjoined.

Judges Buffington, Woolley and Morris, composing the Circuit Court of Appeals who decided this case, are among the highest in experience and reputation in all matters relating to patents.

Defendant's sockets have been manufactured ever since 1908 under and in accordance with United States patent No. 927,344, to E. H. Freeman, president of the defendant Company, granted July 6, 1909, on an application filed July 15, 1908.

Defendant has made two forms of socket, represented by Complainant's Exhibit "Key Socket" and Complainant's Exhibit "Keyless Socket." The key socket is only charged to infringe the fourth claim. The keyless socket is charged to infringe both claims 1 and 4; it differs from the key socket in that it uses no key and employs a depression in the metal of the casing to engage a recess in the base and prevent independent rotation.

Defendant insists that neither of these sockets infringes either (1) when the claims are read literally, or (2) when read in view of the file contents, or (3) when read in the light of the limitations imposed by the prior art. Neither of these sockets borrows anything from the patent in suit; but in so far as they depart from the sockets of the prior art, they do so on an essentially different plan, excluding the distinctive features and mode of operation of the claims in suit, and conforming to the invention of Freeman as patented by him, covering conception and plan of operation distinct from and incompatible with Weber's.

Although this suit was commenced April 27, 1909, and answer filed July 5, 1909, through no fault of defendant the interlocutory decree was not entered until December 23, 1918, and the decision of the Circuit Court of Appeals, August 13, 1919. During all the eleven years, from 1908 until 1920, that defendant manufactured its lamp socket under its own patent, plaintiff was pushing other subsequently-commenced suits to hearing against straight-thrust lamp sockets, obviously for the purpose of first getting the patent sustained against close infringements before risking a decision on defendant's remote construction. Under such circumstances, it is inequitable that the defendant should now be put to an accounting

extending back over twelve years (*Kellogg Co.* vs. *Dean Co.*, 231 Fed., 197).

The presumptions arising both from the defendant's patent and from the above course of the litigation are most strongly in favor of defendant on the question of infringement.

*Corning* vs. *Burden*, 15 How., 252, 271.
*Miller* vs. *Eagle Co.*, 151 U. S., 186, 208.

## Defendant's Positions.

1. Non-infringement of either claim by either of defendant's sockets because of limitation of each claim by the words:

> "interlock with a snap action when telescopically applied to each other."

2. Non-infringement of claim 4 by either of defendant's sockets because of limitation of claim 4 by the words:

> "having a correspondingly located transverse slit and the wall on one side thereof displaced to form a projection bevelled or inclined toward said recessed member and terminating abruptly at said slit."

3. Non-infringement of claim 1 by defendant's key socket (this seems to be admitted) because of limitation by the words:

> "introverted tongues . . . an insulating base . . . in engagement with said tongues."

4. Non-infringement of either claim, by either of defendant's sockets because of amendments made to the application under stress of rejection on Oetting and Kenney.

5. Non-infringement in view of the prior art because prior art structures approached Weber and defendant respectively nearer than defendant approaches Weber.

6. Non-infringement because defendant's sockets are independently patented by the Freeman patent having a different mode of operation and dependent upon the bayonet joint which Weber discarded in favor of the telescopic.

7. Non-infringement because the weight of authority of the opinions on the Weber patent rendered in the lower courts is decisively in favor of a non-infringed interpretation.

8. Non-infringement because of the failure of the Weber patent in suit, as distinguished from the later Weber & Weber patent, to achieve any commercial success.

9. Invalidity for anticipation and non-invention particularly under any broad interpretation of the claims such as plaintiff asks to cover defendant.

10. Invalidity of Claim 1 as for a mere aggregation, particularly in view of the disclaimer of Claims 2 and 3 for one of its aggregated features.

11. We also show that plaintiff's effort at having this patent interpreted as for the result of "automatic and positive locking" is not merely opposed to the decisions as to the non-patentability of results but is also a result not accomplished by the patent in suit because its lock against disengagement by rotation is not "positive." There is no contradiction of the testimony to this effect (Rec., pp. 203-4).

## The Situation Presented to This Court by the Circuit Court of Appeals' Decisions.

This patent has been before the Circuit Courts of Appeals five times; four times in the Second Circuit and once in the Third Circuit, in this case. The opinions are reported as follows:

> *Weber Co.* vs. *National Co.*, 212 Fed., 948; Judges Lacombe, Coxe and Rogers.
> *Weber Co.* vs. *Cutler Co.*, 256 Fed., 31; Judges Ward, Hough and Manton.
> *Weber* vs. *E. H. Freeman Co.*, 262 Fed., 769; Judges Buffington, Woolley and Morris.
> *Weber Co.* vs. *Connecticut Co.*, 263 Fed., 583.
> *Weber Co.* vs. *W. R. Ostrander*, 267 Fed., 445 *per curiam;* Judges Ward, Rogers and Hough.

In the first of the above cases, Judges Lacombe, Coxe and Rogers held (emphasis ours):

> "the **precise** combination of interlocking parts is undoubtedly novel; there is nothing **just** like this in the prior art."

**There was no difficulty about holding infringement in** that case, because defendant's device was a straight-thrust device, and, therefore, contained "the precise combination of the interlocking parts."

The second of the above cases was also against a straight-thrust infringement, and Judges Ward, Hough and Manton used this language (emphasis ours):

> "If they engage by a **straight thrust,** infringement is too clear for discussion * * *. The vital point is that Weber's way is to engage by a **straight thrust** * * *."

Up to this point, it will be observed that the opinions clearly indicate a limitation of the patent to the

"precise combination," and particularly to the "straight thrust."

The first non-straight-thrust case which came up for decision was this case, and the interpretation given to the patent by Judges Buffington, Woolley and Morris was clearly the same interpretation theretofore indicated in the previous decisions as above quoted—namely, a **straight-thrust** interpretation.

This straight-thrust interpretation had also been indicated by the District Courts. Thus, Judge A. N. Hand, in the Cutler-Hammer case, said (256 Fed. Rep., 311):

> "I think it established by the decisions of Judge Ray, Judge Rellstab and the Circuit Court of Appeals (242 Fed., 948, 959) that the Kenney socket is locked by a rotative movement, whereas the Weber socket is locked by a **direct longitudinal thrust.** * * *
>
> "This distinction is not one of non-essentials. The **simple direct thrust** by which the Weber socket locked automatically gave rise to such a general response from the trade that the Circuit Court of Appeals was persuaded that it possessed a novelty and utility which made the device patentable. * * * It was the pioneer device in which the socket was automatically locked by a **direct longitudinal thrust.** * * *"

At this stage there were, therefore, at least nine circuit judges and one district judge on record as indicating a straight-thrust interpretation, and among them such eminent patent judges as Judges Lacombe, Coxe, Buffington and Woolley.

It was not until January 2, 1920, that the Circuit Court of Appeals, Second Circuit, departed from this straight-

thrust interpretation; although it would seem that it should have felt constrained, by the doctrine *stare decisis*, if not for the sake of comity with the Third Circuit C. C. A., to have adhered to the straight-thrust interpretation, or, as Judge Lacombe expressed in the first instance, "the precise combination."

At any rate, the weight of C. C. A. authority is decidedly in favor of the straight-thrust interpretation, because of the nine judges participating in the opinions indicating that interpretation. Six of them have never wavered therefrom, and the three, Judges Ward, Rogers and Hough, who have departed therefrom, previously participated in the opinions indicating the straight-thrust interpretation.

The Ostrander case was before Judges Ward, Hough and Manton. No opinion was rendered and it adds nothing to the discussion.

District Judge Knox, in his opinion in the Ostrander case, however, evidently believed in a straight-thrust construction, but suppressed his own opinion in deference to the Circuit Court of Appeals, saying (267 Fed., 445):

> "Were it not for the prior adjudications of these patents in this Circuit, I think it altogether possible that I should upon present motion for injunction reach a conclusion different from the one I am about to pronounce."

The pamphlet entitled "Court Opinions," submitted by plaintiff, is deceptive if it creates the impression that there is great weight of authority in favor of plaintiff on the question of infringement here presented. Among all of these decisions, there were at least eight in which the question of infringement raised here was not and could

not be in issue, because the alleged infringements were truly telescopic or straight thrust, like the Weber patent, and in so far as these eight decisions referred to the matter, they were opposed to giving the Weber patent any broader interpretation. Aside from the instant case, the only cases involving anything but a straight longitudinal thrust, were the Connecticut case and the Ostrander case.

The Connecticut case involved only claim 1 of the Weber patent; claim 4 was not in issue.

Both claims 1 and 4 of the Weber patent were in issue in the Ostrander case. The opinion of the District Court, however, was merely on a motion for preliminary injunction, and no opinion was delivered by the Circuit Court of Appeals.

## Differences Between the Sockets Alleged to Infringe Here and in the Other Cases.

From the opinions of the Courts, it may be inferred that the Connecticut fastener and the Ostrander made connection by a circumferential movement, instead of a longitudinal thrust, but beyond this, there is nothing to show that there was any similarity between those fasteners and the fastener of this defendant with respect to any other features essential to infringement of claims 1 or 4; and with respect to these other features, it does not follow that the Circuit Court of Appeals of the Second Circuit would have held any differently from the Circuit Court of Appeals of the Third Circuit, if it had had the socket of this defendant before it.

For example, the Connecticut socket differed radically from the socket of this defendant as to the element specified, as follows, by claim 4:

"one of said members being provided with a recess, and the other having a correspondingly-located transverse slit and the wall on one side thereof displaced to form a projection bevelled or inclined toward said recessed member and terminating abruptly at said slit."

In the Connecticut fastener there was such a "slit," and this slit had "the wall on one side thereof displaced to form a projection," and this projection terminated "abruptly at said slit." The sockets of this defendant, on the contrary, have no "slit" at all, and have no "wall" "displaced," and no projection "terminating abruptly at said slit."

The vital words of claim 4, above quoted, exactly describing the Connecticut fastener but distinguishing against the fastener of this defendant, were inserted by amendment in the course of the application for the Weber patent, to avoid a rejection on the prior art, and, therefore, under the decisions of this Court, cannot be disregarded.

The form of the fasteners involved in the straight-thrust cases are shown by the cuts at the end of this brief, from which it will be seen that in every instance the cap and sleeve were capable of being automatically interlocked by a "direct longitudinal thrust," as Judge Hand defined it, or a "straight thrust," as the Circuit Court of Appeals for the Second Circuit defined it, and, therefore, embodied what the Circuit Court of Appeals of the Second Circuit, speaking by Judge Lacombe, called "the precise combination of interlocking parts."

## Weber's Device Merely a Mechanical Fastener.

It is not pretended that there was anything new electrically; nor that there was anything new about the lamp,

or the socket, or the shell or cap or the overlapping relationship of the shell and cap, or the use of some kind of fastener between the overlapping shell and cap.

Baldly, all that is pretended for Weber is that he took the old lamp socket shell and cap, and their old overlapping edges and substituted a new form of mechanical fastener for the old form of fastener.

The change was as purely mechanical as the introduction of a new form of fastener between the overlapping edge of a tin box and its cover, or of a trunk or traveling case and its cover.

All of the electrical appliances were already there and the old overlapping shells already held the electrical appliances in proper alinement. The fastener prevented them being pulled apart, which is the usual function of all fasteners.

The Weber specification says (p. 1, line 35) that his fastener "is applicable to various telescopically connecting members."

The Court is undoubtedly familiar with the ordinary tin boxes for matches and many other articles containing a protuberance and a depression on the overlapping edges so that when the cover is pressed on, the protuberance falls into the depression and its release requires the pressure of the thumb on the side of the box. Such a form of fastening between overlapping sheet-metal edges is one of the oldest devices in mechanics of which the Court may take judicial notice without proof as held in Piper vs. Brown, 91 U. S., 37. Examples of it are shown in the patents to Pollard (Rec., p. 330), Epstein (Rec., p. 359). It is commonly known as a "snap fastener." To monopolize its use for any article would be to infringe upon the inalienable rights of the public. Certainly, if it can be monopolized at all for fastening the shell and cap of a socket, it can only be in the precise form shown.

## The Weber Patent in Suit Unsuccessful.

It is a mistake to suppose that the device described in the Weber patent in suit was successful without improvement. On the contrary, the successful device was that of the Weber & Weber patent No. 916,812, dated March 30, 1909 (Rec., p. 399), and it was the device of the latter patent that the witnesses Ball, Sullivan, etc., extensively quoted in plaintiff's brief, referred to.

It is important to bear this fact in mind in considering the criticisms made by plaintiff upon prior-art devices.

The difficulty with the fastener of the Weber patent in suit was that it failed to produce a positive lock against disengagement. In other words, after the engagement of the snap, a simple rotation would cause it to disengage itself. This is due to forming the projecting member of the snap as described in claim 4 by the words, "the wall on one side thereof (i. e., of the slit) displaced to form a projection beveled or inclined toward said recessed member and terminating abruptly at said slit." The specification also describes this projection (p. 1, line 86) as formed "by slitting the sheet metal at right angles to the slot 12 and forcing outwardly a portion of the metal shell on the inner side of such slit." A projection so formed is inevitably inclined on all sides save toward the slit, and, therefore, offers only frictional resistance against disengagement by rotary movement. It was, therefore, no more a positive lock against disengagement by rotation than was prior art Kenney.

This is testified to without contradiction by defendant's expert Browne (Rec., p. 203):

> "Q. 4. Referring to the two Weber sockets shown you (commercial sockets made under the

later Weber patent 916812) please state how these sockets compare with the Weber patent in suit with respect to the impossibility of a relative rotary movement between the cap and shell?

"A. These Weber sockets differ from the Weber patent in suit in this respect. The Weber patent in suit does not have the open mouthed slots in the cap which engage outward projections on the shell which are characteristic of the Weber sockets and which prevent any relative rotary movement therein between the shell and the cap. In the socket of the Weber patent, it is possible to disengage the cap and sleeve by a relative rotary movement and also to lock them together in a similar manner.

"Q. 5. I now hand you another manufactured sample of the Weber socket which was furnished me by the complainant's attorney and in which the two outward projections which engage the open mouthed slots in the cap have been pressed flat by me so as to render them inoperative. I have marked this specimen socket 'Weber Socket No. 3,' and would ask you how this socket compares with the Weber patent in suit with respect to the capability of relative rotary movement between the cap and shell?

"A. This sample illustrates the capacity for relative rotary movement between the shell and the cap. After the cap and shell have been locked together, they can be readily unlocked from each other by relative rotary movement. Likewise they can be locked together by relative rotary movement after the shell has been thrust into the cap as far as it will go."

This is a direct and unrebutted contradiction of the position taken throughout plaintiff's brief that the Weber patent in suit is a "positive lock."

Furthermore, in the fastener of the patent in suit there is nothing to insure the alinement of the projections and recesses of the snap action.

These difficulties were overcome in the fastener of Weber & Weber patent No. 916,812, by what it describes as "a slot, 19, adapted to receive a projection, 20, on the outer side of the sleeve and guide the parts in their telescopic application to each other with the interlockable projections and recesses of the shell and cap respectively in alinement." The slot 19 and projection 20, at the same time, prevented rotation; therefore prevented disengagement of the snap action by rotation.

Without this modification, it does not appear that the fastener of the patent in suit was ever made for sale and use, or that it was capable of commercial success. (Rec., p. 67, X-Q. 43 and Rec., p. 98, X-Q. 107.)

The commercial success was achieved by the socket shown in the subsequent patent No. 916,812, dated March 30, 1909, applied for July 10, 1904 (Rec., p. 399). It is admitted that no Weber socket was put on the market until the fall of 1904, and then it was the socket of patent No. 916,812 (Rec., 67, X-Q. 43 and p. 98, X-Q. 107).

The story told in plaintiff's record is that two or three sockets exactly like the patent in suit were made by hand as early as January, 1898. Yet none of any kind were marketed for nearly seven years, or until the fall of 1904, after the invention of patent No. 916,812. Why this delay? The correct answer is that the socket of the patent in suit was obviously not capable of commercial success. Why? Because it had no means of registering the snap fastening nor any means of preventing its disengagement by rotation. As soon as these were provided by patent No. 916,812 it became a commercial success, but not until then, and the patent in suit is not

entitled to the halo of commercial success which plaintiff attempts to place around it.

Plaintiff attempts to explain away this delay of nearly seven years on the theory that the Webers were inventing a new base; but if the shell and cap of the patent in suit had had the qualities of great commercial success it could have been used with any of the many bases already on the market and would not have been suppressed to await the invention of a new base. The lameness of this attempted excuse and the fact that the shell and cap of the patent in suit went on the market immediately after the application for patent No. 916,812 is convincing that in the form shown in the patent in suit it was not successful.

Another circumstance is that for five years after it is alleged to have been constructed, no application was filed on the socket of the patent in suit, notwithstanding the admission (Rec. p. 97, X-Q. 1031), that during that whole five years Weber was well able financially to file such application.

Certainly if the socket of 1898 was capable of filling a long-felt want successfully, the application would not have waited five years and the placing on the market nearly seven years, or until other inventions had been developed. The only conclusion possible is that it was those other inventions which made the commercial success.

The commercial incompetence of the socket of the patent in suit without the subsequent patent No. 916,812 is further illuminated by the fact that the Yost snap-lock sockets of the Kenney patents Nos. 712,685 and 712,686 were commercially introduced in January, 1903, and sold that year to the extent of half a million, and in increasing quantities in subsequent years, being represented by exhibits Yost Booklet and Yost Socket No. 1 and No. 2

(Rec., p. 390). Therefore, after the socket of the patent in suit had been abandoned for five years, and a year and one-half before the application for patent No. 916,812, by which it was made commercial, this Yost socket of the Kenney patents had already entered the market and produced a demand for snap-lock sockets.

## The Distinction Between a Bayonet Action and a Telescopic Action.

Both claims 1 and 4 require that the parts shall "interlock with a snap action when telescopically applied to each other."

This language of the claims requires two things:

(1) The "interlock" must be "*with* a snap action."

(2) The "interlock" and "snap action" must occur "*when* telescopically applied to each other."

Defendant's fastener contains neither of these things. On the contrary, (1) defendant's interlock is with a bayonet-joint action, and (2) defendant's interlock and snap action occur when rotationally applied to each other.

If the Court will press defendant's cap and shell together as far as they will go telescopically, it will find that no interlock and no snap action takes place, and that neither takes place until the rotary movement; upon which the interlock first takes place, and lastly, the snap action.

Defendant's bayonet-joint mode of operation may be analyzed as follows:

(1) On the longitudinal part of the bayonet slot nothing occurs save the slight longitudinal movement necessary to put the parts in position for what follows. The longitudinal part is merely a necessary incident to what follows. Even if the slight longitudinal movement in

this part of the slot be dignified as telescopic, still it does not comply with the requirement of the claims that the "snap action" occur "when telescopically applied to each other," because no snap action occurs at this part of the slot.

(2) On the circumferential part of the bayonet slot (which by no possibility can be called telescopic) the first thing that occurs is the "interlock," because the stud enters under the lip overhanging this part of the slot the instant rotation commences. Under any possible view, therefore, the interlock occurs, not "*when* telescopically applied to each other," but *after* everything which might by any possibility be called telescopic has passed.

(3) When the interlock has advanced to the end of the circumferential part of the slot, the snap action takes place. It is not an "interlock with a snap action" but an interlock before a snap action. Weber is truly called an "interlock with a snap action," because they are simultaneous; indeed, in Weber the interlock is the snap action; they are one and the same thing. In defendant, on the contrary, they are different things; located at different parts of the shell. The bayonet-joint interlock would exist if the snap action were omitted from defendant.

Functionally, also, defendant's is totally different from Weber's.

(a) The function of interlocking to oppose pulling apart is, in defendant, performed by the circumferential part of the bayonet slot and not by the snap action.

(b) The function of the longitudinal part of the bayonet slot is merely to enable the parts to position themselves for entering the circumferential part where all the essential operations occur.

(c) The function of defendant's snap action is merely to prevent backward rotation in the bayonet slot. It takes

no part in opposing pulling-apart strain, which is the sole function of Weber's snap action. The snap action of the Weber patent in suit is so formed as not to prevent rotation (Rec., pp. 203-4).

In Weber, only one movement is required of the operator—a straight thrust—and the thing is done. In defendant, on the contrary, two movements are required—a thrust, which does nothing but position the parts, and a rotation, which interlocks and finally reaches the snap action.

Since it is the rigid bayonet joint of defendant which resists pulling apart, not dependent upon any spring, such as a snap action, it is obvious that the defendant's construction is of superior efficiency.

Finally, the words "telescopically," "telescopic," or "telescope," have never been applied to a bayonet joint, or any part thereof, or its mode of operation. It is most significant that plaintiff has utterly failed to find any such use of those words in the art, notwithstanding the exhaustive search which it evidently has made.

The fact that plaintiff's brief can only resort to definitions of such remote things as lifting jacks, dental-chairs and gun-sights, is a tacit admission of the desperate nature of its position.

Dictionaries give the following definition:

"Bayonet joint, a form of coupling similar to that by which a bayonet is fixed on the barrel of a musket."

*Knight's Mechanical Dictionary*, Edition of 1882, gives the following definition:

"Bayonet Joint. A peculiar form of coupling in which one circular piece, having a slot longitudinal for part of its length and transverse the remainder, is sleeved over another. The interior piece is provided with a stud which

enters the slot, and, by turning, the two parts become locked so as to prevent withdrawal by a longitudinal movement."

This definition applies exactly to defendant's construction, and we submit that no mechanic would ever confuse this movement with that of a telescope, or anything telescopic. The bayonet-joint movement and the telescopic movement have always been recognized as distinct as any two movements in mechanics can be.

As already pointed out, however, even if the "slot longitudinal for part of its length," involved in the definition of a bayonet joint, could be associated with a telescopic movement, it would not help the plaintiff, because the bayonet-joint definition says that "by turning, the two parts become locked so as to prevent withdrawal by a longitudinal movement"; whereas both claims in issue require that the locking should occur not on a rotary movement but "when telescopically applied to each other." In other words, the time of interlocking with the bayonet joint and defendant is when turning; whereas the time of interlocking required by both claims is when telescoping.

It was obviously just such distinctions that the Courts had in mind when, as already shown, they interpreted the claims as for "the precise combination of interlocking parts," and said, "Weber's way is to engage by a straight thrust," and also said, "the Weber socket is locked by a direct longitudinal thrust," to distinguish against those bayonet-joint sockets of the prior art which locked by rotation.

We respectfully submit that the public had the right to rely upon this clear language of limitation in the claims, and upon this clear interpretation by the Courts, and

should not be prejudiced by the retrospective effect of the decision rendered by the Circuit Court of Appeals of the Second Circuit in the Connecticut case as late as the year 1920, or, in other words, as late as the year in which the patent expired and twelve years after defendant's device entered the market.

The juggle of words and definitions by which plaintiff attempts to argue that defendant's construction is like or equivalent to Weber's construction, leads to the absurd conclusion that the well known bayonet joint is the same as the telescopic joint. Lexicographers, as well as mechanics, rightfully place the bayonet joint and the telescopic joint in separate classes. There are no two classes of joints that are more distinct. Weber employs one class, and his improvements and claims relate to that; defendant employs another class, and its improvements and patent relate to that. They are independent inventions. Defendant's construction involved quite as much invention as Weber's, if not more, and neither one involves a sufficiently radical step to dominate the other.

This Court well expressed the status of this patent in *Bone* vs. *Marion County*, 251 U. S., 134, 145, by saying that the patent in suit

> "was a step, not a leap, in that progress and that the only originality that can be accorded it is in its special form and there can be no infringement except by a copy of that form or a colorable imitation of it."

The references in plaintiff's brief to the telescopic jack, the dental-chair and the gun-sight definitions and patents, are misleading and constitute no support whatever for plaintiff's position.

The Court can readily perceive that the effective movements in such instruments are and must be straight. If, for example, a jack be used for jacking up the axle of an automobile, its motion must be straight up and down. It cannot be slightly up and then to one side, as in a bayonet joint. So, also, with a dental-chair. It lifts the patient straight up, and not to either side.

The screw in all such cases is merely the power which gives the up and down movement to the telescoping parts, just as the hand is the power which moves the ordinary telescope in and out. Indeed, in large telescopes, a screw is substituted for the hand for moving the telescoping parts.

For example, in the telescopic jack patent to Joyce (Rec., p. 443), the telescoping part 7, which lifts the load, moves straight up and down, without any laternal or turning movement. It, therefore, truly telescopes within the pedestal 1. The thing which turns is the screw 3, which simply provides the power for causing the lifting member 7 to telescope within the pedestal 1.

The same is true of the other Joyce patent (Rec., p. 445), wherein the lifting member 6 is caused to telescope straight up and down within the pedestal 1.

The same is true of the Mayfield dental-chair patent (Rec., p. 447), wherein the lifting member Y is caused to telescope within the base A by screws M, I, and E, the lifting member Y having a purely up and down movement relatively to the pedestal.

Such things certainly afford no ground for calling a bayonet joint, or any part of it, telescopic. A bayonet-joint movement would be absurd for a jack, or a dental-chair or a gun-sight.

## Prior Art.

The prior-art patents may be conveniently classified as follows:

**Interlocked with snap action when telescopically applied, and released by compression:**

Pollard No. 320, 814, box (Rec., p. 330).
Ashworth No. 589,921, box (Rec., p. 349).
Epstein No. 657,267, box (Rec., p. 359).
Oetting No. 642,825, lamp (Rec., p. 356).
Kenny, British, Fig. 4, lamp (Rec., p. 383).
Rodman No. 414,922, lamp (Rec., p. 332).

**Bayonet lock guarded from backward rotation by set-screw:**

Knowles No. 516,819, lamp (Rec., p. 338).
Wirt No. 587,027, lamp (Rec., p. 346).
Perkins No. 626,927, lamp (Rec., p. 352).
Marshall No. 680,932, lamp (Rec., p. 362).
Yost Catalogue, lamp (Rec., p. 390).

**Bayonet lock guarded from backward rotation by snap action:**

Kenney No. 712,685, lamp (Rec., p. 370).
Kenney No. 712,686, lamp (Rec., p. 373).
Yost catalogue, lamp (Rec., p. 390).
Kenny, British, Figs. 6 and 7, lamp (Rec., p. 383).

From the above list of the prior-art references, it would seem obvious that, in view thereof, it is impossible for any patent founded on the Weber construction to cover the defendant's construction.

The various fasteners listed above as "Interlocked with snap action when telescopically applied, and released by compression," certainly come closer to the Weber construction than does defendant; all of them engaging by a straight longitudinal thrust and being held from pulling apart by the snap action itself.

On the other hand, all of those listed as "Bayonet lock guarded from backward rotation by set-screw" resemble defendant's construction more nearly than does Weber, because of having a bayonet lock mode of operation both for engaging and separating, and of being held by the rigid bayonet slot against pulling apart, instead of by a snap action. In addition to this, the Kenney United States patent and Kenny British patent resemble defendant's construction in guarding the bayonet lock against backward rotation by a snap action.

As a further aid to the Court, we will, however, proceed to take up these references more in detail.

### The Pollard Patent (Rec., p. 330).

The testimony of defendant's expert Browne as to this patent is at Rec. p. 155.

This Court is undoubtedly familiar with the ordinary tin box for matches and other articles in which the overlapping edges of the cover and the box are held together by a snap action which automatically engages when closing and is disengaged for opening by pressure of the thumb on the side of the box. No reason is seen why the double use of such a device for fastening together the overlapping edges of the shells of a lamp and its socket should constitute invention, or, at any rate, a sufficiently broad invention to enable the patent to cover anything more than the precise construction shown.

It should be remembered that the Weber specification (p. 1, line 35) says that his fastener "is applicable to various telescopically connecting members."

## The Oetting Patent (Rec., p. 356).

The testimony of defendant's expert Browne as to this patent is at Rec. p. 153.

This patent was issued February 6, 1900, considerably more than two years before the application of Weber, and whatever was shown therein became, under the 1897 amendment of Sections 4892 and 4920 of the Patent Statute, public property.

When Oetting's shell 5 is thrust into his cap 4, his snap action engages, consisting of the spring catches 6 entering the slots 11, from whence they can only be released by compression. Thus, in the language of the Weber claims 1 and 4, Oetting's sleeves "interlock with a snap action when telescopically applied to each other" and are "released by compression of said sleeve."

Plaintiff attempts to avoid Oetting on the theory that the lips 9 of Oetting's snap action did not enter the cap 4 automatically; but certainly no invention would be required to bevel either these lips or the edge of the cap 4 sufficiently to make the action automatic, just as is done in the case of a door latch, or any other latch and in the Rodman patent. However that may be, it must be plain that Oetting is far closer to Weber than is defendant in mode of operation. It is also far closer in result, because the resistance to pulling apart is afforded by the snap action itself in Oetting, just as it is in Weber, and in contradistinction to defendant, where the snap action merely acts as a guard to the bayonet joint, which bayonet joint affords the resistance to pulling apart.

## The Rodman Patent (Rec., p. 332).

The testimony of defendant's expert Browne as to this patent is at Rec. p. 154.

In this, the overlapping sheet-metal sleeves of the socket and lamp "automatically interlock with a snap action when telescopically applied to each other" and the release is accomplished by compression of the snap action. The engagement of the snap action is positive, both longitudinally and laterally, and is, therefore, better than Weber's.

The Rodman patent, Figs. 3 and 9, shows the lamp shell 33 inserted within the socket shell 21, and the snap action as consisting of a spring projection 42 on the lamp sleeve engaging a hole 44 in the socket sleeve. The upper side of the spring projection 42 is beveled so that it enters the shell automatically like a door latch but its lower and lateral sides are abrupt so as to form a positive lock against pulling apart.

The Rodman specification states (Rec., p. 336, line 10): "the spring-catches entering the said apertures when the lamp-socket is forced upward into the fixture-socket," and adds: "in order that the catches may be thrown from engagement with the socket 21, I provide each catch with a push-button 45, so that by pressing on the buttons the catches may be thrown inward and the lamp disconnected from the fixture-socket."

The only movement of the lamp is engaging and disengaging is a direct telescopic movement. Rodman and Weber "automatically interlock with a snap action when telescopically applied to each other." Also, in both, the snap action itself directly resists the pulling-apart strain. In both, its engagement is positive longitudinally, and in Rodman, but not in Weber, also circumferentially.

The only difference in mode of operation between Rodman and Weber is that in Rodman a thumb piece 45 is provided for compressing the snap action in releasing, while in Weber the thumb applies the compression di-

rectly to the lamp sleeve; but such a difference as this could not constitute an invention, in view of the fact that in the generality of snap actions of the prior art, such as Pollard, Oetting, etc., the compression for release was applied directly to the sheet-metal, as in Weber. At any rate, the mode of operation of Rodman as a whole is far nearer that of Weber than is the defendant's, including the automatic interlocking with a snap action when telescopically applied, and the direct opposition of the snap action to pulling apart, which are absent in defendants. Certainly the advance of Weber, if any, over Rodman is not sufficient to support anything more than a specific claim.

**The Kenney U. S. Patent No. 712,686 (Rec., p. 373).**

The testimony of defendant's expert Browne as to this patent is at Rec. p. 152.

The Weber application was rejected on this patent (Rec., p. 236), the rejection acquiesced in and avoided by amendment. Therefore Weber is now estopped from denying that this patent is part of the prior art (Melber vs. School Dist. 243 Fed. 196 C. C. A., 3).

This Kenney United States patent was applied for May 31, 1902, and issued November 4, 1902. The engaging mode of operation is the same as that of defendant. In other words, by a bayonet-joint movement the inward projections N from cap are interlocked with the bayonet slots M of the sleeve, and when this has been accomplished, the snap action (projection G and hole E) is engaged by a continuation of the rotary movement, so as to prevent backward rotation.

In this Kenney construction, as in defendant, the resistance against pulling apart was afforded by the engagement of the projections N with the bayonet slots M; while the function of the snap action G, E is exclusively to guard the bayonet joint from turning backward.

The contention of plaintiff is that the Kenney snap action does not form a positive resistance against rotation because the projections G of the snap action are beveled in a circumferential direction. But this does not constitute a distinction against Weber, because Weber's projections of the patent in suit when made as described (p. 1, line 86)—"by slitting the sheet metal at right angles to the slot 12 and forcing outwardly a portion of the metal shell on the inner side of such slit"—and as also described in claim 4, would inevitably be inclined circumferentially and would, therefore, not furnish a positive resistance against rotation and the consequent unlocking (Rec., p. 03-4).

It is in evidence that the Kenney construction of United States patent 712,686 was marketed and advertised as early as January, 1903 (Rec., p. 190, Q. 14, and p. 390), the witness stating: "during that year a quantity approximating a half million was manufactured and sold and thereafter the number manufactured and sold gradually increased and they have been marketed in quantities aggregating several million."

It thus appears that the Kenney construction was on the market for nearly two years before any Weber construction, since it is admitted in evidence that no Weber socket was put on the market until the fall of 1904 (Rec., p. 67, X-Q. 43, p. 98, X-Q. 107), and even then the Weber construction put on the market was not that of the patent in suit but of the subsequent patent No. 916,812 (Rec., p. 98, X-Q. 107).

The Kenney U. S. patent 712,686 was certainly so near to defendant's device as to preclude any patent on the Weber device from covering defendant.

## The Kenny British Patent (Rec., p. 383).

The testimony of defendant's expert Browne as to this patent is at Rec., p. 208.

This prior-art patent was applied for May 15, 1896; the completed specification filed October 10, 1896, and accepted November 21, 1896. The latter is the date when it became prior art under stipulation (Rec., p. 139), and was more than two years prior to Weber's application. Everything shown in it was, therefore, open to public use, under the 1897 amendment to the Patent Statute.

This Kenny British patent shows two applications of the snap-fastener action to lamps. In one (Figs. 7 and 8) it is applied between the cap and shell of an incandescent lamp socket, which is the same application as that of the Weber patent. In the other (Figs. 4 and 5) it is applied as a fastener for a lamp shade.

## The Kenny British Patent, Incandescent Lamp Socket.

This is shown in Figs. 7 and 8, and is described in the specification (Rec., p. 386, line 12), as follows:

> "I find in practice it is more convenient for the simple wiring of wall brackets and the like, to construct the lamp holder 1 so that the lower portion or tube may be removed from the top portion which connects to the bracket (see Figs. 2, 4, 6 and 7). I accomplish this and dispense with the usual union ring by forming the top 7 with an external diameter of such size as to engage with the internal diameter of the upper part of the tube portion 1, which latter portion 1 form with spring tongues 8, one or more of which have their extremities bent inwards to form projections 9 (see Fig. 7) at the top of the tube 1. These

projections 9 enter recesses 10 in the top portion 7 and connect the two portions 1 and 7 together, but on turning the tube portion 1 a fraction of a revolution, the projections 9 leave the recesses 10, allowing the tube 1 to be withdrawn. A small inclined portion 11 in the top 7 allows the projections 9 to be slided up same, so as to expand them previous to their springing into the recesses 10.

"If desired, I can form these spring tongues in the upper portion 7 of the holder 1, instead of in the tube 3 as just described; i.e., the positions may be reversed."

In other words, in this fastener there is a bayonet movement. A straight longitudinal thrust brings the parts in position to be interlocked by rotation. Then, upon rotation, the projections 9 snap into the recesses 10. This action is closer to Weber than is defendant, for two reasons. In the first place, the Kenny parts "automatically interlock with a snap action." In the second place, it is the snap action itself which resists any pulling-apart strain. Whereas we have seen that in defendant the interlocking of the bayonet joint precedes the snap action and the snap action itself bears no part in resisting the pulling-apart strain.

The effect of Figs. 6 and 7 of this British patent is, therefore, clearly to prevent any patent on the Weber structure from being broad enough to cover defendant's structure.

This British patent construction will be represented by an illustrative model handed to the Court.

## The Kenny British Patent, Lamp Shade Fastener.

This is shown in Figs. 4 and 5 of the British patent and is described in the specification as follows (Rec., p. 386, line 22):

> "the shade holder 3 may be secured on the lamp holder 1 in various ways. * * * A spring-catch (see Figs. 4 and 5) wherein the shade carrier is slid onto the bottom of the lamp holder and the spring tongue projections A in the latter, springs into recesses B in the shade carrier and so hold the latter in position."

In other words, this is a snap fastener automatically engaged by a direct telescopic movement, and when engaged, the snap fastener parts A and B of themselves directly oppose pulling-apart strain. They are also automatically disconnected by being, as the specification says, "first pushed up a short distance, and then partly turned around and thrown off."

In view of the fact that the Weber specification does not purport to be limited to the application of the snap action to an incandescent lamp socket, no reason is seen why this lamp shade holder is not a pertinent reference. The Weber specification says (p. 1, line 35):

> "My invention is applicable to various telescopically connected members, but is especially adopted for use in the telescopically connected cap and sleeve members of incandescent electric lamp sockets, and I will illustrate in the drawings its use in such connection."

This shade-holding snap fastener of the British patent is another instance having such a limiting effect upon the Weber patent as to prevent its being broadened to cover defendant's construction.

## Review of the Prior Art From the Snap-Action Standpoint.

The knowledge of the uses of snap actions of which this Court may take judicial notice (*Brown* vs. *Piper*, 91

U. S., 37), and those contained in this record, presents an array of uses in general of snap actions, as well as for lamps in particular, sufficiently common to make the snap action a device open to general purposes by the public wherever found useful; as much so as ordinary locks, catches, hasps, etc., etc. Under these circumstances, it is hardly conceivable that this Court will hold the mere double use of the snap fastener to secure together the shell and cap of a lamp socket to be patentable.

When to this is added the fact that the snap action had already been applied to this use in Oetting, Rodman, Kenney, etc., the necessity of limiting the patent to the specific manner of application, if patentable at all, is still more apparent.

And when we consider that Weber's method of application was to use the snap fastener at the end of a straight thrust to directly resist the strain of pulling apart, as in ordinary tin boxes, it must be evident that he must be limited to this method of using it. And when it is still further considered that the defendant uses the snap action in no such way, but, on the contrary, uses it merely to guard the bayonet lock against backward rotation, wherein the resistance against pulling apart is borne exclusively by the bayonet lock, it must be evident that, without resort to the language of any claims, and merely from a consideration of the scope of the invention, it is impossible for any patent upon the Weber construction to cover the defendant's construction.

## The File Contents.

Under the decisions of this Court below noted, rejections by the Patent Office, acquiesced in by amendment during the course of the application for a patent, have a

controlling influence upon the interpretation of claims ultimately issued.

The file contents of the Weber patent exhibits a case of the presentation of broader claims (Rec., p. 234), their rejection on Oetting patent No. 642,825 and Kenney United States patent No. 712,686 (Rec., p. 236), and acquiescence in the rejection by erasure of the broader claims and amendment of others (Rec., p. 237).

Neither claim 1 nor claim 4 can possibly escape the limiting effect of this situation.

The use by Weber (Rec., p. 238) of the expression, "simple telescopic movement" in reference to the straight thrust certainly was not made with any idea of including such a compound (as distinguished from simple) movement as the bayonet movement. This, we need not discuss at this point, however, since it is fully discussed later on in connection with plaintiff's criticisms on the opinion appealed from.

Turning, now, to claim 4, which was originally 7, the following parallel presents certain language of it before and after amendment, the inserted words being italicized:

| *Before Amendment.* | *After Amendment.* |
| --- | --- |
| * * * one of said members being provided with a recess and the other having a correspondingly located | * * * one of said members being provided with a recess and the other having a correspondingly located *transverse slit and the wall on one side thereof displaced to form a* |
| projection bevelled or inclined toward said recessed member and terminating abruptly | projection bevelled or inclined toward said recessed member and terminating abruptly *at said slit* |
| whereby said members are * * *. | whereby said members are * * *. |

It thus appears that under stress of rejection on Oetting and also on Kenney, to avoid any question of anticipation, the manner of forming the "projection" "terminating abruptly" was added as a limitation; this manner of forming being stated to be by a

> "transverse slit and the wall on one side thereof displaced."

The projection formed by the transverse slit, with one wall displaced, was different from the projection of either Oetting or Kenney; but it is also different from the projection of defendant, which is simply a metal stud riveted to the cap.

Oetting's projection was a bend (called "lips") in the catch 6 forming part of the sleeve (Rec., p. 356) which lips entered the slots 11 of the cap and formed a positive lock both longitudinally and circumferentially. So long as these projections remained in place, the sleeve could not be pulled off or rotated.

The "projection" of the Kenny British patent, Fig. 7, was a bend 9 in the metal of the shell itself.

The "projection" of the Kenney United States patent 712,686 was a stud G riveted to the cap.

In so far as concerns the position of the "projection" on the shell and forming it by bending the metal of the shell itself, the "projection" of Oetting and of the Kenny British patents resembles Weber more than does defendant's stud on the shell, which more nearly resembles the Kenney United States patent.

The limitation by amendment to the making of the Weber projection by a "transverse slit and the wall on one side thereof displaced," clearly distinguished against the stud or pin projection of the Kenney United States patent,

and against the projection formed by bending the sheet-metal of the shell of the Oetting and Kenny British patents; but it likewise distinguished against the projection of the defendant's device, which is a pin or stud referred to in the defendant's Freeman patent (Rec., p. 322) as the "lug 19."

Therefore the limitation, inserted by amendment, as to the formation of the "projection," distinguishes against the defendant's projection the same as against the prior-art projections, which it was inserted under the stress of avoiding.

Yet, more, the applicant was not satisfied with the words "terminating abruptly" of the original claim, or with the words, already referred to, introduced by amendment, but, to make his avoidance of the reference doubly sure, he also inserted the words "at said slit," so as to specify not merely a projection "terminating abruptly" but one whose abrupt termination was located "at said slit."

Obviously, the projecting stud of Kenney United States patent, or the projecting lent metal of Oetting or Kenny British patents, not having any slit, were not located "at said slit"; but no more is the stud of defendant.

The round hole in defendant's shell, numbered 15 in the Freeman patent (Rec., 324), is not the "projection" to which the above amendments of claim 4 apply, and is not a slit. It is more like the square hole lettered E of the Kenney United States patents for engagement with the projection. And even if this round hole of defendant were distorted into a slit, it could not be said that there was any projection "terminating abruptly" "at said slit," or that it had "the wall on one side thereof displaced to form a projection."

Finally, by no juggling of language does it appear possible to apply the language of this amendment to defendant's projection short of reading the amendment entirely out of claim 4. This, the decisions of this Court will not permit.

*Hubbell* vs. *United States*, 179 U. S., 77.
*Corbin Co.* vs. *Eagle Co.*, 150 U. S., 38, 40.
*Sheppard* vs. *Carrigan*, 116 U. S., 593, 598.
*Liggett* vs. *Avery*, 101 U. S., 256.
*Knapp* vs. *Morss*, 150 U. S., 221, 227.

We cannot find that plaintiff's brief makes any reference whatsoever to these amendments in claim 4, which we interpret to mean that plaintiff has no answer to their effect of limiting the claim to the exclusion of defendant's constructions.

Plaintiff's brief obviously attempts to make it appear that but one point is involved in the question of infringement. On pages 4 and 21 it designates the meaning of the word "telescopically" as the "sole question" and the "one point." This is entirely misleading, as the above discussion shows.

It is sufficient to quote from one of the above cases (*Hubbell* vs. *United States*, 179 U. S., 83):

> "Whether the examiners were right or wrong in so holding we are not to inquire, as the claimant did not appeal, but amended his claim and accepted a grant thereof; thereby putting himself within the range of the authorities which hold that if the claim to a combination be restricted to specified elements, all must be regarded as material, and that limitations imposed by the inventor, especially such as were introduced into an application after it had been persistently rejected, must be

> strictly construed against the inventor and in favor of the public, and looked upon as in the nature of disclaimers."

The distinction made by the above amendments from the defendant's socket were in a large measure absent from the Connecticut socket, held to infringe by the Second Circuit Court of Appeals. In the Connecticut socket the projection was not formed by a stud riveted to the cap, as in this defendant's socket. On the contrary, in the Connecticut socket the projection was formed on the shell, as in Weber, and was made, in the language of claim 4, by a "slit and the wall on one side thereof displaced to form a projection * * * and terminating abruptly at said slit." In other words, the Connecticut slit and projection were precisely like the Weber slit and projection turned at right-angles.

The opinion of the Circuit Court of Appeals in the Connecticut case described the defendant's shell in that case as having "a slit parallel to sleeve axis, the wall on one side of which has a cut metal projection, whose abrupt side faces the slit, and over whose bevel or incline the cut metal cap 9 rides with ease—but engages said abrupt face with a snap action." This description, of course, clearly differentiates the Connecticut socket from this defendant's socket, wherein the projection was merely an ordinary stud riveted to the cap. Therefore, because the Second Circuit Court of Appeals held infringement of claim 4 by the Connecticut socket, is no reason for saying that it would have held infringement by this defendant's socket.

## No Infringement.

The socket principally manufactured and sold by defendant, in evidence as "Defendant's Key Socket," is not charged to be an infringement of any claim except the fourth. Defendant's keyless socket (which differs from the other only in the fact that depressions in the casing fitting between ribs in the base impart the same interlock against rotary movement of base relative to casing as is imparted by the presence of the key in the key socket) is, by reason of this indentation, charged to infringe the first claim as well as the fourth.

This art was, prior to Weber, developed under two classes. The Weber construction naturally ranges itself in one of these classes and has been placed therein by the decisions of the courts, by the amendments in the Patent Office, and by the patent itself.

On the other hand this defendant's construction is placed in the other class naturally by terms of the patent; the amendments in the Patent Office and decisions.

These classes are as follows:

1. The class including the Oetting patent and the Weber patent in suit which operates by what the decision in the Cutler-Hammer case has styled "a straight thrust" or telescopic movement. It is nothing more nor less than the adoption of the common snap fastening which has been known from time immemorial for joining articles of sheet metal. (See Pollard patent, p. 330; Ashworth patent, p. 349.) It not merely involves only a straight thrust, but is constructed by the mere bending or cutting of the sheet metal itself without extraneous additions.

2. The other class depends upon a bayonet joint movement as distinguished from a straight thrust. In this

class the bayonet interlock by which the parts are held against longitudinal strain does not include any snap action at all. In this class, however, various devices were used to guard against the unlocking of the bayonet joint by a backward turn. In some cases this guarding was done by a set screw. In others it was done by a snap action.

Instances of the bayonet joint guarded by a set screw against the unlocking return movement are the following references:

Knowles No. 516,819, applied for December 9, 1892, issued March 20, 1894.

Wirt No. 587,027, applied for April 30, 1897, issued July 27, 1897, in which the bayonet slot is lettered A and the set screw C.

Instances where a bayonet joint movement was employed in locking and unlocking, and the unlocking was guarded by a snap, are the following:

Kenny British Patent No. 10,429 of 1896 (p. 383).

Kenney U. S. Patent No. 712,685, applied for May 31, 1902, dated November 4, 1902 (p. 370).

Kenney U. S. Patent No. 712,686, applied for May 31, 1902, issued November 4, 1902 (p. 373).

The Kenney joint was manufactured and sold under the name Yost as appears by the testimony (p. 188 *et seq.*).

In most of the decided cases the infringement has been exclusively of the first or "direct thrust" class. And, as we have already shown, the decisions have relied upon the straight thrust to distinguish against the references

in the other class, and have thereby been enabled to discard all of the references in the other class as irrelevant.

In the Patent Office the same policy was pursued by Weber of amending so as to exclude all references of the second or bayonet joint movement class.

The construction of this defendant was the first one charged to infringe which lies in the second class, and therefore, it held to be an infringement, not merely required a different interpretation of the patent from that required for holding other infringements, but an interpretation which was incompatible with the decisions theretofore rendered in other suits on this patent.

It is also incompatible with the position assumed by Weber in the Patent Office upon which he obtained his patent.

The broadening of the Weber patent to cover a construction of the second class is incompatible with the essential terms and history of the Weber patent here in suit.

As defendant's key socket and keyless socket are identical in respect to the elements charged to infringe the fourth claim, they may be considered as one when dealing with this claim, which relates to the means for attaching the two members of the casing together. Defendant's sockets use for this purpose the bayonet joint of the prior art, necessitating the partial rotation to effect the union. Extraneous lugs are riveted into one member of the casing which are incapable of effecting attachment by a telescopic movement, and can only be brought into locking engagement by the same turning movement employed in the prior bayonet joint sockets. The distinctive departure made by Weber from this old construction consisted in dispensing with the lateral recesses and turning movement and attachment of extraneous projections

(whether screws, lugs or rivets), and instead constituting the means of attachment by making transverse slits in one member, displacing or bending outward the wall adjacent to that slit intermediate between it and the edge of the member, thus forming a beveled projection which sloped toward the edge of that member, cutting corresponding recesses in the opposite member, and enabling the two members to be united by a direct telescopic movement in which the edge of the recessed member slid up the incline afforded by such a bevel and sprung under the projection so formed. He thus avoided attaching fastening elements and excluded circumferential movement. This displacement of the metal above the transverse slit to form the bevel inclined in line with the telescopic movement, and dispensing with any rotary movement, was the only departure from the prior art which afforded any pretext for allowing the fourth claim, and in view of the prior art now exhibited is the only pretext for sustaining any claim.

No such element, no such mode of operation, no such result, is present in defendant's socket, which *retains the bayonet joint construction and operation*, supplementing it by an *independent check* against *rotary* movement. Its plan and operation are utterly inconsistent with, and excluded by, the Weber plan.

Defendant's socket is made under the Freeman patent, granted to the president of the defendant company July 6, 1909, upon an application filed July 15, 1908, reissued May 30, 1911, upon an application filed August 9, 1910 (R., p. 322). Defendant operates under license from the patentee (dep. Freeman, R., p. 290, A. 1-26; defendant's exhibits, Freeman's Original License and Freeman Extension of License, pp. 291-294). This

patent retains the bayonet joint construction in which lugs or projections attached to one member of the casing are inserted in L-shaped recesses on the other member in exactly the manner of the old bayonet joint construction used for the same purpose in prior electric lamp sockets; that is, entering freely the vertical slots which reach to the edge of the slotted member and being brought into the lateral recesses by the usual rotary movement. Pursuant to the Freeman patent, a round hole is bored at a short distance from the key slot and one of the four equidistant lugs riveted to the other member of the casing slides on the edge metal of the vertical key slot at the same time the other lugs enter the vertical part of the L-shaped recesses. During the longitudinal movement of the members, the lugs slide freely through their respective paths, encountering no resistance. The absence of any metal in the path of the lugs entering the L-shaped recesses leaves the fourth lug free to pass over the periphery of the casing, and its proximity to the vertical key slot enables the casing to readily yield as it passes over it. When the *rotary movement necessary to turn the lugs into lateral recesses is applied*, the lug which has traveled down the edge of the key slot moves in the same rotary direction from the key slot to the above-mentioned hole, into which it sinks, and serves to prevent *rotation* of one member of the casing relative to the other while thus seated. Equidistant lugs are riveted into the lug-carrying member, three of them registering with the bayonet joint recesses and the fourth with the edge of the key slot, so that no selection of position is necessary other than bringing the lugs in line with the slots of the bayonet joint. If either lug is in line with its slot, all the other lugs will be in proper alignment and enter with-

out encountering resistance, because the slots in *each case extend to the edge of the slotted member*. To facilitate the initial movement required to bring the lugs into position for the turning and locking movement the *lateral edge* of the *vertical key slot is bent inward*, permitting the lug *which engages it to readily slide laterally over it into the hole, under the circumferential impulse*. It can only be carried into this hole near that slot by a circumferential or *turning* movement. The two members can neither be united nor separated without a definite rotary movement corresponding to the movement required when uniting the bayonet jointed socket casings of the prior art. They are positively retained in place by the *undeflected metal wall under which the rotary movement has brought the lugs*. To separate them the locking lug has to be released by a *rotary* movement accompanied by inward pressure on the lateral wall of the key slot (or a similarly placed vertical slot in case of the keyless socket), followed by a longitudinal movement, the two movements required in the old bayonet joint constructions from which Weber departed, including the Kenney from which his amendments avowedly differentiated his invention. Only after they have been brought in line with the vertical slots which extend to the edge of the member can they be separated, when the lugs slide freely through their slots precisely as in the old bayonet joint construction.

Whatever advantage there may be in enabling the members to be united by a "simple telescopic movement" and in securing the parts together solely by slitting and displacing the wall of the casing, defendant has dispensed with, but it has, by a plan which rejects the whole scheme of the Weber patent, obtained a much snugger,

neater and more secure joint, and one which when in service does not disclose to meddlers how it can be opened.

## Non-Infringement of Claim 4.

From the foregoing discussion, it will be gathered that we assert non-infringement of claim 4 because of the limitation imposed by each of the following expressions quoted therefrom:

> (1). "*Transverse slit and the wall on one side thereof displaced to form a* projection bevelled or inclined toward said recessed member and terminating abruptly *at said slit.*"
>
> (2). "Interlock with a snap action when telescopically applied to each other."

We assert that neither of the defendant's sockets (key or keyless) conforms with either of the above limitations.

We assert that the words in italics were inserted by amendment under stress of rejection and that defendant's socket contains nothing whatsoever conforming therewith.

In other words, defendant has no projection formed by displacing "the wall on one side" of a "slit," and contains no projection which terminates at any slit. In fact, defendant's construction contains no "slit" whatsoever. Its "projection" is merely an ordinary stud or bolt riveted to the cap, and the other member of its snap action is merely a round hole in the shell.

We assert, also, that although the second expression above quoted was not inserted by amendment, it was evidently adopted to distinguish against the structures of the prior art having a bayonet-joint action. To distinguish

against such, it includes the words "interlock with a snap action" because this is true where the interlock itself has a snap action, and is not true in any case where the interlock has a bayonet action.

The words "a snap action when telescopically applied to each other" were also adopted to exclude a bayonet action, because in a bayonet action, if any snap fastener is used at all, it must not be when the parts are moving in a telescopic direction, but can only be brought into play when they have rotated to the end of the transverse part of the bayonet slot.

We also assert that the limitations imposed by the prior art are such that the limitations of the claims must be strictly construed, holding the patent, as was expressed by Judge Lacombe in the first Circuit Court of Appeals' decision in the Second Circuit to the "precise combination."

## Non-Infringement of Claim 1.

We assert that defendant's key socket fails to conform to either of the following expressions in claim 1:

> (1). "introverted tongues * * * an insulating base * * * in engagement with said tongues" (non-infringement of this element by defendant's key socket we believe is conceded by our adversaries).
>
> (2). "interlock with a snap action when telescopically applied to each other."

We assert that defendant's keyless socket fails to conform to the second of the above expressions. Since we do not understand that infringement of the key socket of the first of the above expressions is asserted, further discussion of that point is unnecessary.

We have already fully discussed non-infringement by either of the defendant's sockets of the second of the above expressions.

## Invalidity of Claim 1 as Being for a Mere Aggregation.

Claims 2 and 3 were disclaimed by Weber February 25, 1920 (272 O. G., 552). These claims covered the "introverted" projections referred to in claim 1 as the "introverted tongues." This "introverted tongue" was the only element of claim 1 (originally claim 3) which distinguished it from original claims 1 and 2, which were rejected by the Examiner and his rejection acquiesced in by erasure. It would seem to evidently follow that claim 1 falls with the admission, implied by this disclaimer of claims 2 and 3, that the introverted tongues were old in a socket of this kind.

This point is well set forth in the testimony of Mr. Browne, as follows (Rec., p. 156):

> "Claim 1 specifies an aggregation and not a combination, because it recites the two unrelated features of preventing the rotation of the insulating base, and of locking the cap and sleeve together.
>
> "The claim calls for 'a sheet metal sleeve having introverted tongues' and 'an insulating base for electrical fittings loosely enclosed within said sleeve in engagement with said tongues.' This has reference to the devices for preventing relative rotation between the sleeve and base which are more particularly recited in claims 2 and 3.
>
> "On the other hand, claim 1 calls for 'a pair of members comprising a sheet metal sleeve having a slotted end and a cap adapted to telescopically receive the slotted end of said sleeve, said members

having interengaging parts adapted to automatically interlock with a snap-action when telescopically applied to each other, and to be released by compression of said sleeve.' This has reference to the devices for locking the cap and sleeve together, which are specifically set forth in claim 4.

"It will be noted that this language of claim 1 expresses the cap and sleeve locking means much more comprehensively than claim 4. Indeed, these recitations of claim 1 are substantially the same as the recitations of original claim 2 which was rejected upon the patents of Oetting No. 612,825, and of Kenney, No. 712,686, and was then cancelled. Original claim 2 was as follows:

> "'2. In a device of the class described, and in combination, an inner, resilient, split, tubular member, and an outer member adapted to telescopically receive said split member, said members having interengaging parts adapted to automatically interlock with a snap-action when telescopically applied to each other, and to be released by compression of said inner member.'

"Claim 1 covers the subject matter of rejected and abandoned claim 2 when aggregated with the means for preventing rotation between the closing sleeve and insulating base.

"It is evident that these two different features are wholly independent of each other and have no common object. Their only relation is one of juxtaposition due to their incorporation in the same structure.

"The whole independent character of these two different contrivances is well shown by the exhibits illustrating defendant's manufacture.

"Defendant's key socket has no means for preventing the insulating base from rotating except the projecting key itself. It has no 'introverted

tongues' for this purpose on the sheet metal sleeve as called for by claim 1. In this key socket of defendant, the insulating base can be removed altogether and then the locking devices between the cap and the shell act just as perfectly as when the insulating base is present. The perfect and complete locking action between the shell and cap has nothing whatever to do with the presence or absence of the insulating base or whether the base is prevented from rotation or not.

"The same lack of any co-operative action between the two sets of instrumentalities is likewise shown by defendant's keyless socket. The insulating block can be removed from this socket and the locking devices between cap and shell are then equally perfect in their action while the inbent tongues then perform no office whatever. Likewise, the cap of this exhibit can be removed altogether, and if the insulating base is then put in place, the inturned tongues perfectly perform their office of keeping the insulating base from rotating.

"These two contrivances have no relation whatever between each other.

"The same is true of the socket of the patent in suit. If Weber's insulating block is removed, the locking devices between the cap and shell act perfectly and the introverted tongues then have no function. Likewise, Weber's cap can be removed and his introverted tongues then act with equal efficiency to prevent rotation of the shell with respect to the insulating base.

"Accordingly, claim 1 recites an aggregation of unrelated features and not a combination or unitary structure at all.

"Moreover, the prior art abundantly shows that it was old before Weber to provide an incandescent lamp socket both with means for locking the cap and shell together and with means for preventing rotation of the insulating base within the shell.

This is shown by the patents of Marshall, No. 680,932, and No. 690,976, and of Knowles, No. 516,819, to which I have already referred and explained."

## The Date of Invention.

Plaintiff's brief contends (p. 49) that the invention was made in January, 1898, that the socket was, by the Webers, "carefully put away in their safe" and that nothing more was done until the application for the patent in suit, nearly five years thereafter, on December 10, 1902, followed two years later, in the fall of 1904, by putting the socket of the later Weber patent, No. 916,812, on the market. During all this secretion and delay, Weber admits that he was financially well able to have applied for a patent (Rec., p. 97, X-Q. 103). Upon this state of facts, plaintiff claims a date of invention as of January, 1898. There are two answers to this contention.

(1). It makes no difference to this case whether Weber is credited with 1898 or 1902 as the date of his invention.

(2). The facts above recited show abandonment by secretion and delay from January, 1898, to the date of application, December 10, 1902, and, therefore, disentitled Weber to the January, 1898, date.

The reasons for the first above answer are two-fold.

In the first place, Oetting, of February 6, 1900, and Kenny, British, of November 21, 1896, and all the other references excepting the two Kenney United States patents, were patented more than two years prior to the Weber date of application and are, therefore, made prior art by Section 4886 and the third defense of Section 4920 as amended in 1897.

In the next place, Weber is estopped from denying the prior-art status of either Oetting or Kenney United States patents because, upon their citation as prior art by the Patent Office Examiner, Weber acquiesced and amended to avoid them.

*Melber* vs. *School District*, 243 Fed., 196, is a direct authority to this effect, the headnote being as follows:

> "The acquiescence by the applicant for a patent in the citation against him of references by the Examiner precludes him in a subsequent suit from carrying back the date of his invention to antedate such references."

The reason for the second answer, above given, namely, that of abandonment, is that no inventors can retain right against the public while their devices are "carefully put away in their safe" for nearly five years, during which the art is progressing independently; particularly where such inventors admit their financial ability to have done otherwise.

Plaintiff's brief cites no authority for its position against abandonment, and we believe no authority exists.

Plaintiff's position is opposed to the following decisions:

> *Gordon* vs. *Wentworth*, 31 App. D. C., 150.
>
> *Curtain Supply Co.* vs. *National Lock Washer Co.*, 174 Fed., 45.
>
> *Continental Works* vs. *Single Tube Co.*, 178 Fed., 452.
>
> *Consolidated Co.* vs. *Wright*, 94 U. S., 92.
>
> *Comptograph Co.* vs. *Adder Mach. Co.*, 41 App. D. C., 427.

*Thomson* vs. *Weston*, 19 App. D. C., 373.
*Nelson* vs. *Faucette*, 33 App. D. C., 217.

Plaintiff's brief endeavors to excuse this inaction on the plea that the device would have infringed existing patents if put upon the market. But this plea does not excuse the delay of Weber in applying for the patent for nearly five years while his device was put away in his safe, and we do not know of any case where the fear of infringing a patent has been accepted as a valid excuse. The contrary was decided in *Consolidated* vs. *Wright*, *supra*.

It should be noted that during this five years the Kenney United States patents were applied for May 31, 1902, and issued November 4, 1902, and that the sockets of the Kenney patents were commercially introduced in January, 1903, and in that year sold to the extent of half a million, and in increasing quantities in subsequent years (Rec., p. 390); being unquestionably, as testified to by Mr. Chapman (Rec., p. 150, Q. 16), "the first socket marketed embodying the snap lock feature"; the introduction of the Weber socket of the later Weber patent being "approximately two years after."

Under the above circumstances, we might safely rely upon the position that everything done by Weber prior to his application of December 10, 1902, was abandonment; but it is not necessary for us to further argue that point, in view of the fact that, for the two reasons above given, the alleged date, of January, 1898, cannot, under the law, affect the potentiality of any of our prior-art references.

## The Opinion of the Third Circuit C. C. A. and the Criticisms Thereof in Plaintiff's Brief.

This opinion gives evidence of far greater pains and comprehension than any other C. C. A. opinion that has been rendered. It applies itself to the wording of the patent, the file contents, the prior art and the various decisions, and even plaintiff's brief is forced to admit that it shows a thorough comprehension of the mechanics of the case. It is so thorough as to constitute a brief of the case in itself, relieving us from much discussion, and, therefore, we submit a reprint of it as an appendix hereto.

There is a fundamental error lying at the foundation of plaintiff's criticisms. Plaintiff treats the Weber patent as though it were for a result or function, forgetting that a result or function is not patentable even by a process patent, much less by an apparatus patent such as Weber's. Plaintiff gives the result of the Weber device as "an automatic and positive locking connection" and criticizes the opinion substantially because it did not interpret the patent as for this result. To have done so would have been directly contrary to all the decisions of this Court on the subject.

*Corning* vs. *Burden*, 15 How., 252.
*Brown* vs. *Guild*, 90 U. S., 191.
*Westinghouse* vs. *Boyden*, 170 U. S., 558.
*Burr* vs. *Duryea*, 1 Wall., 535.

In the case of an improved apparatus patent, what the Court has to deal with is the means by which the result is accomplished. And even if two devices accomplish similar results, it does not follow that they are infringements of each other.

In this case, however, even the results were not the same, because by the use of the Weber device of the patent in suit the result is attaching by means of a straight direct thrust, and the snap action bears the burden of resisting pulling apart. In defendant the result is different. The attaching requires two motions—a straight thrust for positioning the parts and a rotation for engagement; while the resistance to pulling apart is borne by the interlocking bayonet joint exclusively. To say that both of them provide "an automatic and positive locking connection" is merely to select a portion of the result, ignoring the rest.

Moreover, "an automatic and positive locking connection" is not the result of the Weber patent in suit, and, therefore, plaintiff's brief is contending for a result which this patent does not produce. We have already pointed out, and fortified by the testimony (Rec., p. 203-4), that the halfmoon shaped projection of the Weber patent in suit cannot form a "positive" lock against rotation and may be unlocked by rotation in either direction, thereby destroying the attempt at distinction against Kenney. We have also pointed out that the later Weber & Weber patent, No. 916,812 (Rec., p. 399), was to preclude the possibility of disengagement by rotation and provide the positive lock.

In its criticism of the opinion, plaintiff also ignores the opinions of this Court as to the statutory requirements of a claim. This Court has repeatedly held that the claim is not "like a nose of wax which may be turned and twisted in any direction," but is a "statutory requirement, prescribed for the very purpose of making the patentee define precisely what his invention is."

*White* vs. *Dunbar*, 119 U. S., 47, 51.
*Keystone Co.* vs. *Iron Co.*, 95 U. S., 278.
*Howe Co.* vs. *National Co.*, 134 U. S., 394.
*Railroad Co.* vs. *Mellon*, 104 U. S., 118.
*Burns* vs. *Myer*, 100 U. S., 672.

In compliance with these requirements, we believe the language of the claims, both originally and in amendment, was obviously adopted expressly to distinguish against the bayonet-lock fasteners of the prior art; the compound or rectangular movement of which, in fastening, Weber believed that he had avoided by his telescopic thrust. We believe it to be perfectly evident that the plaintiff's effort now is, by treating the claims as "a nose of wax," to turn and twist them so as to cover the very mode of operation which they were intended to discard. Such is, in effect, the C. C. A. decision, fortified by references in the opinion to every source from which the Courts receive light as to the interpretation of the claims.

The opinion appealed from holds that a bayonet-joint movement is not "telescopic," and cites definitions. Plaintiff's brief has not found a single instance where a bayonet-joint movement, or any part thereof, has been defined or referred to as "telescopic," and until it can do so, it has no right to criticize the opinion appealed from to the contrary. Plaintiff's definitions are simply cases where a direct telescopic movement is accompanied by lateral movement of the power giving the telescopic movement and as a mere incident to the telescopic movement, such as the turning by the fingers in focusing a telescope, or the use of a screw to force the telescope in and out, or the jack or dental-chair up and down. In none of these cases has the lateral movement of the fingers or

the screw been termed telescopic, and, therefore, they are entirely beside the mark, being not of themselves telescopic, but being merely the power that produces the telescopic movement, and having no relation whatsoever to a bayonet movement.

In its criticism of the opinion appealed from, plaintiff's brief ignores the fact that in defendant's device the interlock and the snap action are produced exclusively when the rotary motion is in play, and not at all on the longitudinal movement, and, therefore, in no possible sense "when telescopically applied to each other."

It also ignores the fact that, in defendant, the parts do not "interlock with a snap action," but that the snap action is at the end of the rotary movement producing the interlock.

Plaintiff's brief is equally erroneous in its criticisms of the opinion touching the file wrapper and contents. Plaintiff's position, baldly, is that where Weber used the expression "simple telescopic movement" (Rec., p. 238), he meant to include a bayonet-joint movement. The absurdity of this is manifest when it is considered that no bayonet-joint movement can be styled a simple movement, because it is compounded of two movements at right-angles to each other. Obviously, in the file wrapper, Weber used the expressions "simply inserting one within the other" and "simple telescopic movement" to express the straight thrust which "interlocks with a snap action when telescopically applied to each other," in contradistinction to the compound movement of the prior-art bayonet joints.

In discussing the file wrapper and contents, the following conclusion of the opinion appealed from was inevitable:

"Weber's locks by 'simply inserting one (member) within the other,' Kenney's by 'simply rotating one member upon the other.' * * * As 'simply rotating one member upon another' "is not 'simply inserting one (member) within the other' it is not the movement described in Weber's remarks as 'telescopic.' "

The criticism of plaintiff's brief on what the opinion below said as to the effect of the Weber later patent, No. 916,812, upon the interpretation of the word "telescopic" is also erroneous. In that patent the slot 19 in the cap and projection 20 on the shell were provided expressly to limit the motion to a straight thrust and prevent any rotation, and, therefore, the "telescopic movement," referred to in that patent, can be nothing else than a straight thrust. Weber himself was forced to admit this (Rec., p. 98, X-Qs. 107-8.) If the direction of movement of the patent in suit was supposed to be of broader latitude than that of the later patent, so as to include the rectangular bayonet movement, certainly the same word "telescopic" would not have been used in both.

Finally, we believe that the opinion appealed from is correct in finding the exclusion of the bayonet-joint movement from the patent in suit evidenced by the patent itself, the file contents, the prior art, and the decisions of the Courts, and that the criticism of plaintiff's brief is wholly without foundation.

## Conclusion.

It is respectfully submitted that the decision of the C. C. A. of the third circuit was correct and should be affirmed.

Respectfully submitted,

LIVINGSTON GIFFORD.

DAVID P. WOLHAUPTER,

*Counsel for Respondents.*

March 17, 1921.

# APPENDIX

# APPENDIX.

ORDER OF EXHIBITS.

1. Reprint Opinion 3d C. C. A.
2. Page 552 Patent Office Official Gazette, Vol. 272, Containing Disclaimer by Plaintiff of Claims 2 and 3 of Weber Patent.
3. Illustration of Socket of Weber Patent No. 743206.
4. Illustration of Oetting Socket.
5. Illustration of Rodman Socket.
6. Illustration of "Lange" Socket.
7. Illustration of Freeman Socket.
8. Illustration of Kenney ("Yost") Socket.
9. Illustration of *Straight-thrust* Sockets of the Other Adjudications on Weber Patent No. 743206.
10. Illustration of "Connecticut" Socket.

## APPENDIX.

In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1919.

No. 2440.

E. H. FREEMAN ELECTRIC COMPANY, Defendant-Appellant,

vs.

WEBER ELECTRIC COMPANY, Plaintiff-Appellee.

March Term, 1919.

No. 2441.

WEBER ELECTRIC COMPANY, Plaintiff-Appellant,

vs.

E. H. FREEMAN ELECTRIC COMPANY, Defendant-Appellee.

On Appeal from the District Court of the United States for the District of New Jersey.

Before Buffington and Woolley, Circuit Judges, and Morris, District Judge.

MORRIS, *District Judge:*

Weber Electric Company, the plaintiff, filed its bill in equity against E. H. Freeman Electric Company, charging infringement of United States letters patent No. 743,206, for improvements in incandescent-electric-lamp sockets, granted to August Weber, Sr., November 3, 1903, and by him assigned to the plaintiff. The claims in issue were 1 to 4, inclusive. From a decree adjudging claims 1 and 4 valid and infringed, and claims 2 and 3 invalid, both parties appealed.

The incandescent-electric-lamp socket to which Weber's patent relates is a sheet metal case consisting of a sleeve and a cap telescopically fitting over the end of the sleeve. The case thus formed encloses an insulating base with which the line wires entering through a central aperture in the cap are connected and upon which is affixed a screw-socket for receiving the screw-threaded shank of an incandescent lamp. The patent deals principally with interlocking means between the sleeve and cap and with means to prevent rotative movement between sleeve and base when a lamp is being inserted in or removed from the screw-socket affixed to the base. The claims in issue are set out at length, and plaintiff's structure described, in the opinion of the court below. 253 Fed., 657.

The plaintiff contends that claims 1, 2, 3 and 4 are infringed by defendant's keyless socket, and claims 1 and 4 by defendant's key-socket, and, as cross-appellant here alleges that the court erred in adjudging claims 2 and 3 invalid, instead of valid and infringed. Each of these claims was held valid and infringed in a suit brought in the southern district of New York by this plaintiff against National Gas & Electric Fixture Co. 204 Fed., 79; affirmed 212 Fed., 948. The defendant contends, however, that in view of the evidence as to the prior art presented in this but not in the former case both claims 2 and 3 are invalid for want of patentable novelty. This new evidence consists, among other things, of British patent to The Edison & Swan Electric Light Co. Ltd., No. 6781 of 1895, British patent to Gover, No. 11,714 of 1897, and U. S. patent No. 575,322 to Benjamin, dated January 19, 1897. Each of these patents, as does Weber's, pertains to electric lamp socket. The Edison & Swan patent states:

"The base A is grooved along each side, and the casing G which holds it has its two opposite sides indented as shown at H, so that the base A and the parts fixed in it are made to occupy the proper position relatively to the bayonet catch slot K by which the lamp base is held in the socket."

The Gover patent expressly provides:

"The two sides of the socket are indented so as to form internal protuberances *p* engaging in the grooves *i* of the insulator to prevent it from turning."

In these two patents the lamp is mounted directly upon the sleeve by means of bayonet slots instead of upon the base by means of the lamp support or screw-socket as in Weber's, but in the Benjamin patent the lamp is mounted upon the base by means of a screw-socket, the base being enclosed in a case or shell of two parts screwed together. Benjamin described his means of preventing rotation between the case and base thus:

"Upon the interior of the shell or casing *a* two lugs or projections $e^2$ $e^2$ are provided, which engage corresponding recesses $a^9$ $a^9$ in the base *a* to prevent rotation of the base relatively to the casing."

To prevent unscrewing the sleeve and cap when screwing the lamp into or unscrewing it from the screw-socket of the base Benjamin placed his projections within the cap instead of within the sleeve. Each of these three patents antedates the Weber invention. The means to prevent relative rotative movement between case and base called for by Weber's claims 2 and 3 consists of a "peripheral recess" in the base and "a sheet metal sleeve having a

portion of its wall introverted to occupy said base recess." These claims deal only with means to prevent rotative movement between base and socket, and do not, as do claims 1 and 4, include means to automatically interlock with a snap action when the case memers are telescopically joined, thereafter to remain interlocked until released by manually compressing the sleeve. The device described in each of the prior art patents accomplishes the same purpose by substantially the same means operating in substantially the same way as does the introverted portion of the case wall called for by Weber's claim 2 and 3, and this is true whether or not the claims be restricted to the specific device he describes. Consequently these claims lack novelty and fall within the references to the prior art. We are, therefore, of the opinion that claims 2 and 3 of the Weber patent cannot be sustained, and that the court below did not err in so holding.

The defendant-appellant by its assignments of error alleges that the court below erred in finding claims 1 and 4 valid and infringed. These claims were in issue and sustained in Weber Electric Co. vs. National Gas & Electric Fixture Co., 204 Fed. 79; affirmed 212 Fed. 948; Weber Electric Co. vs. Wirt Mfg. Co., 226 Fed. 481; and Weber Electric Co. vs. Cutler-Hammer Mfg. Co., (unreported); affirmed 256 Fed. 31. Claim 4 was in issue and sustained in Weber Electric Co. vs. Union Electric Co., 226 Fed. 482. In view of these decisions and because we think the plaintiff has failed to show that the defendant has used the particular devices to which the plaintiff can be considered entitled under these claims, assuming them to be valid, our discussion will be confined to the question of infringement.

Claims 1 and 4 for "a cap adapted to telescopically receive the slotted end of said sleeve;" to which claim 1

adds "said members having interengaging parts *adapted to automatically interlock with a snap action when telescopically applied to each other;*" and claim 4, after describing the interengaing parts, provides, "whereby said members are *adapted to automatically interlock with a snap action when telescopically applied to each other.*" That the italicized words are words limiting and restricting the claims to such interengaging parts as will automatically interlock with a snap action when telescopically applied to each other is clear. Paper Bag Patent Case, 210 U. S. 405, 410. The Corn-Planter Patent, 23 Wall. 181, 218-219. Dey Time-Register Co. vs. W. H. Bundy Recording Co., 169 Fed. 807; affirmed 178 Fed. 812. Long vs. Pope Manufacturing Co. 75 Fed. 835, 839. But the meaning of these words of limitation, and particularly of the words "when telescopically applied" remains to be ascertained. For this purpose resort may be had to the state of the prior art, the file wrapper and contents of the Weber patent in suit, Weber's patent No. 916,812, where the identical words are again used by him, and to the dictionaries.

The incandescent-electric-lamp socket in most general use before and at the time of Weber's invention was made in two parts, one sleeved over the other and united by a bayonet joint. To form this joint one member had an open end slot, longitudinal for part of its length and transverse the remainder. The other member was provided with a stud which entered and passed down the longitudinal part of the slot as the members were pushed together; then by a rotary movement of one member upon the other the stud entered the transverse part of the slot and locked the two parts so as to prevent separation by a longitudinal movement. The members were held against

reverse lateral motion by friction or by the tightening of a screw forming the stud in one or more of the bayonet joints.

The chief object of Weber's invention was to provide an automatic and positive locking connection between the sleeve and cap of the socket. His original application contained eight claims, but, as disclosed by the file wrapper and contents, certain claims were rejected by the patent office on patent to Oetting, No. 642,825 or to Kenney, No. 712,686. The Oetting device, as appears by the specification, was intended to do away with the bayonet joint as a locking means. It substituted therefor spring tongues formed within and as part of the sleeve, and bent flanges or lips on the spring tongues adapted to engage openings or slits in the flange of the cap. The lock so formed was positive in that it required deliberate effort to release it. The parts were adapted to interlock by simply slipping or pushing one within the other as contrasted to the bayonet joint locking movement, but the lock was not automatic, for manual depression of the spring tongues was necessary to permit the flange of the cap to pass over the protruding lips. In Kenney's device the opening in the sleeve consisted of bayonet slots, and bayonet slots with a bridge crossing the transverse portion of the slot at its intersection with the vertical portion, the bridged bayonet slots being designated in the patent as open-end slots and adjacent pockets with a bridge between them. Radial inwardly projecting studs on the cap were designed to travel vertically in and to the lower end of the open-end slots or gates, thence laterally across the bridge and into the adjacent pockets, while additional radial projections on the cap were traveling in the vertical and transverse portion of the bayonet unbridged slots,

and entering recesses within the periphery of the socket base to lock it in position. The radial projection entering the bridged bayonet slot was beveled on each side to permit its passing over the bridge by a lateral or rotary movement in locking and unlocking. Kenney's lock would not operate by the longitudinal assembling of the case members; it required a rotary movement; it was not positive for it could become unlocked without a deliberate effort to accomplish that purpose, but it was automatic in that it could be locked without separate manipulation of the interengaging parts.

After the above mentioned rejection of claims, the patentee amended his application and filed with the amendments remarks which indicate not only his understanding of the manner in which his device differed from those of Oetting and Kenney, but also his understanding of a "telescopic movement." Concerning his own device he says: "The parts are permitted to be applied to each other by simply inserting one within the other, without manually compressing the inner member," &c. As to the Oetting construction he states: "The parts cannot be locked together by simple telescopic movement, it being necessary to manually depress the catches," &c. He thus distinguishes from Oetting, not in the direction of the locking movement or in the positiveness of the lock, but in the automatic feature only. In so doing he treats the direction of locking movement as identical and describes it synonymously as "simply inserting one within the other" and as a "simple telescopic movement." Touching the Kenney socket Weber says: "Kenney's device is adapted to unlock by simply rotating one member upon another in the same manner that the parts are locked together, no manual compression of the inner member being

necessary." Comparing this description with the Weber structure we find that both locks are automatic; Weber's is positive, Kenney's is not; Weber's locks by "simply inserting one (member) within the other," Kenney's by "simply rotating one member upon the other." The distinguishing features are the positiveness of the lock and the direction of locking movement. As "simply rotating one member upon another" is not "simply inserting one (member) within the other" it is not the movement described in Weber's remarks as "telescopic." It thus appears that "telescopic movement" is used by the patentee, not to describe a bayonet joint locking movement, but a movement in antithesis thereto. This is confirmed by the patentee's use of the words "when telescopically applied" in his subsequent patent, No. 916,812, which covered a device so constructed as to prevent relative rotary motion of the cap and sleeve both during and after their telescopic application. And we think these words apt and appropriate to define the straight longitudinal movement as distinguished from the bayonet joint movement, for such is their ordinary and usual acceptation.

Hawkins' Mechanical dictionary, under "Telescopic pipe-joint" says: "The telescopic joint permits longitudinal extension and contraction." The word "telescope" is defined by the Standard dictionary thus:

"To drive together so that one slides into another like the sections of a spyglass or small telescope; to crush by driving together into or upon; to move like the sliding portions of a spyglass in closing."

Lexicographers have so uniformly defined this word that the meaning given by one may be accepted as imparting the thought of all. The verbs in this definition convey

the idea of a longitudinal force impelling a direct onward or forward movement in contradistinction to lateral force and rotary motion.

But even assuming that the words "when telescopically applied" are susceptible of a construction sufficiently broad to include the bayonet joint locking movement, the remarks, filed in the patent office by the patentee or on his behalf, distinguishing the Weber locking movement from that of Kenney, disclose that either Weber always intended and understood that these words should bear their usual meaning and thus exclude the Kenney movement, or under stress of the patent office rejection he elected to so restrict their meaning. In either event the result is the same, namely, that having thus limited his claims to exclude the bayonet joint movement of Kennedy he is not now entitled through the aid of the doctrine of equivalents or otherwise to a construction that would embrace it.

The direction of the Weber locking movement has been heretofore considered by the courts, not, it is true, in cases in which the members of the socket alleged to be an infringement were adapted to interlock by a bayonet joint movement only, for such device appeared in the history of the Weber litigation for the first time in the court below, but in cases in which the locking parts were adapted to interengage when applied to each other by a single, straight, longitudinal movement. In those cases the courts, construing the claims there in issue and differentiating the Weber device from those of Kenney and Oetting, have held that the Weber locking movement is a straight longitudinal motion along the axial line of the two members of the socket, and that this constituted a feature distinguishing it from the Kenney device. In the Union Electric Co. case Judge Rellstab, referring to the Weber device, said:

"From this recital, it will appear that in assembling the members nothing beyond telescopically applied pressure was necessary to effect interlocking."

And as to the Kenney device, said:

"No interlocking of the Kenney members could be effected automatically by telescopic pressure. A rotary movement of the members against each other was absolutely necessary to put the radial projections and the intermediate lugs into position to effect a locking engagement."

Judge Ray, in the National Gas & Electric Fixture Co. case referred to the interlocking of the two members of the Weber socket as taking place "as the two are pushed together." Judge Hand, in the Cutler-Hammer Mfg. Co. case, said:

"I think it is established by the decisions of Judge Ray, Judge Rellstab, and the circuit court of appeals, that the Kenney socket is locked by a rotative movement whereas the Weber socket is locked by a direct longitudinal thrust. * * * Judge Ray * * * said as to the Bray patent No. 170.703, that the partial rotation required for disengagement was a distinguishing mark from the mode of operation of the Weber patent."

The Circuit Court of Appeals, in affirming Judge Hand, said, "The vital point is that Weber's way is to engage by a straight thrust * * *"

While the dominant feature of Weber's inventive idea may be the interlocking without handling or manipulating the catches as in Oetting, and the positiveness of the lock which requires manual compression of the slotted sleeve

to unbolt it, as contended by the plaintiff, yet the protection afforded by the patent is no broader than its claims; and in view of the foregoing considerations we are of the opinion that the words "adapted to automatically interlock with a snap action when telescopically applied to each other" found in claims 1 and 4 limit those claims to such means or members as will so interlock when applied to each other by a straight longitudinal motion along the axial line of the two members of the socket.

As defendant's key and keyless sockets charged to infringe claims 1 and 4 both lock with the bayonet joint movement and their locking means are not adapted to interlock when the members or means are telescopically applied to each other, we think the charge of infringement cannot be sustained.

The decree of the district court is accordingly affirmed as to claims 2 and 3, and reversed on the issue of infringement as to claims 1 and 4, with directions to dismiss the bill with costs to the defendant in this court and the court below.

Endorsements: 2440. 2441. Opinion of the Court by Morris, J. Received & Filed Aug. 13, 1919. Saunders Lewis, Jr., Clerk.

## Adverse Decisions in Interference.

PATENT No. 1,348,158.

On February 11, 1920, a decision was rendered that Talbot G. Martin was not the first inventor of the subject-matter covered by claim 73 of his Patent No. 1,348,158, subject, "Automatic telephone exchanges," and no appeal having been taken within the time allowed such decision has become final.

## Interference Notices.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
*Washington, D. C., February 26, 1920.*

*Charles Triolo, his assigns or legal representatives, take notice:*

An interference having been declared by this Office between the application of Kunz, Marsh & Pendleton, of 170 Reade street, New York, N. Y., for registration of a trade-mark and trade-mark registered Nov. 17, 1896, No. 29,165, to Charles Triolo, of Chicago, Ill., and a notice of such declaration sent by registered mail to said Charles Triolo at the said address having been returned by the post-office undeliverable, notice is hereby given that unless said Charles Triolo, his assigns or legal representatives, shall enter an appearance therein within thirty days from the first publication of this order the interference will be proceeded with as in case of default.

This notice will be published in the OFFICIAL GAZETTE for three consecutive weeks.

R. F. WHITEHEAD,
*First Assistant Commissioner.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
*Washington, D. C., February 27, 1920.*

*Ward & Cresswell, their assigns or legal representatives, take notice:*

An interference having been declared by this Office between the application of Ulysses G. McClure, 2534 West Sixteenth street, Chicago, Ill., for registration of a trade-mark and trade-mark registered May 22, 1900, No. 24,976, to Ward & Cresswell, Philadelphia, Pa., and a notice of such declaration sent by registered mail to said Ward & Cresswell at the said address having been returned by the post-office undeliverable, notice is hereby given that unless said Ward & Cresswell, their assigns or legal representatives, shall enter an appearance therein within thirty days from the first publication of this order the interference will be proceeded with as in case of default.

This notice will be published in the OFFICIAL GAZETTE for three consecutive weeks.

R. F. WHITEHEAD,
*First Assistant Commissioner.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
*Washington, D. C., March 4, 1920.*

*Benjamin L. Herman, his assigns or legal representatives, take notice:*

An interference having been declared by this Office between the applications of the American Shirt Company, Inc., 101 Fifth avenue, New York, N. Y., for registration of a trade-mark and trade-mark registered June 8, 1915, No. 104,685, to Benjamin L. Herman, 122 Hackensack Plank Road, Hackensack, N. J., and a notice of such declaration sent by registered mail to said Benjamin L. Herman at the said address having been returned by the post-office undeliverable, notice is hereby given that unless said Benjamin L. Herman, his assigns or legal representatives, shall enter an appearance therein within thirty days from the first publication of this order the interference will be proceeded with as in case of default.

This notice will be published in the OFFICIAL GAZETTE for three consecutive weeks.

R. F. WHITEHEAD,
*First Assistant Commissioner.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
*Washington, D. C., March 8, 1920.*

*Henrietta J. Damon, her assigns or legal representatives, take notice:*

An interference having been declared by this Office between the application of Western Grocer Company, of Marshalltown, Iowa, for registration of a trade-mark and trade-mark registered January 16, 1906, No. 48,919, to Henrietta J. Damon, of 89 State street, Boston, Mass., and a notice of such declaration sent by registered mail to said Henrietta J. Damon at the said address having been returned by the post-office undeliverable, notice is hereby given that unless said Henrietta J. Damon, her assigns or legal representatives, shall enter an appearance therein within thirty days from the first publication of this order the interference will be proceeded with as in case of default.

This notice will be published in the OFFICIAL GAZETTE for three consecutive weeks.

R. F. WHITEHEAD,
*First Assistant Commissioner.*

## Disclaimers.

743,206.—*August Weber, Sr.*, Schenectady, N. Y. INCANDESCENT-ELECTRIC-LAMP SOCKET. Patent dated November 3, 1903. Disclaimer filed February 25, 1920, by the assignee, *Weber Electric Company.*

Enters this disclaimer—

"To that part of the claim in said specification which is in the following words, to wit:

"2. In a device of the class described, the combination with a base of insulating material having a peripheral recess; and an incandescent-lamp support mounted thereon; of an inclosing case therefor comprising in part a sheet-metal sleeve having a portion of its wall introverted to occupy said base-recess, substantially as described.

"3. In a device of the class described, the combination with a base of insulating material having a peripheral recess; and a screw-socket fixedly mounted thereon; of an inclosing case therefor comprising in part a sheet-metal sleeve having a portion of its wall introverted to occupy said base-recess and prevent a relative rotative movement between said sleeve, base and socket, substantially as described."

1,190,923.—*Robert Gans*, Berlin, Germany. SOFTENING OF WATER. Patent dated August 22, 1916. Disclaimer filed March 2, 1920, by the assignee, by mesne assignments, *The Permutit Company.*

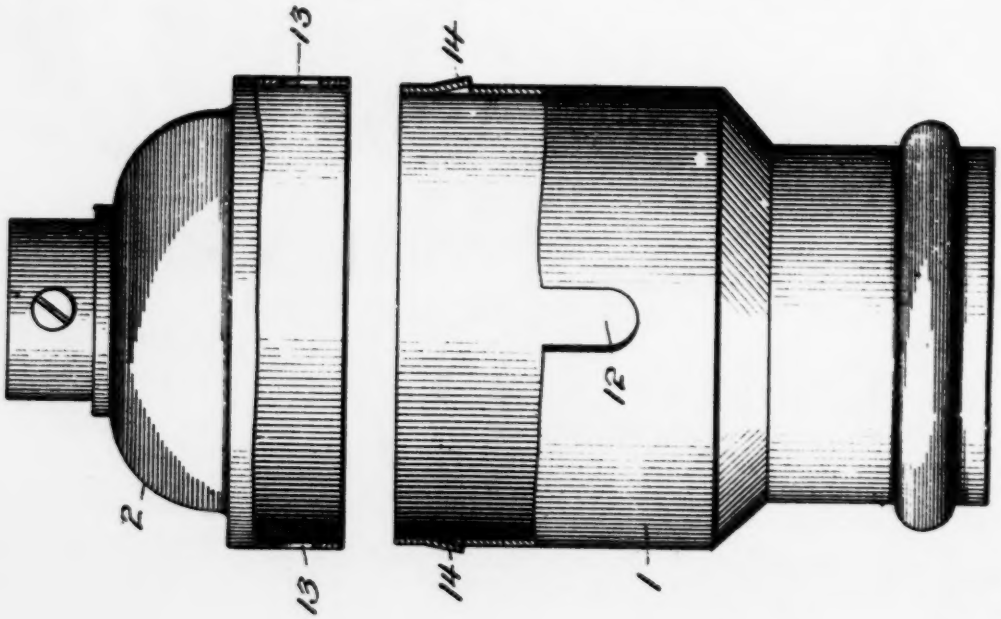
"Hereby disclaims from the scope of claim 1 of Patent 1,195,923, any water softening apparatus including a layer of zeolites or hydrated alumino-silicates disposed on a layer of sand or quartz in which the water to be softened is so introduced into the casing that it passes upwardly through said layer of zeolites."

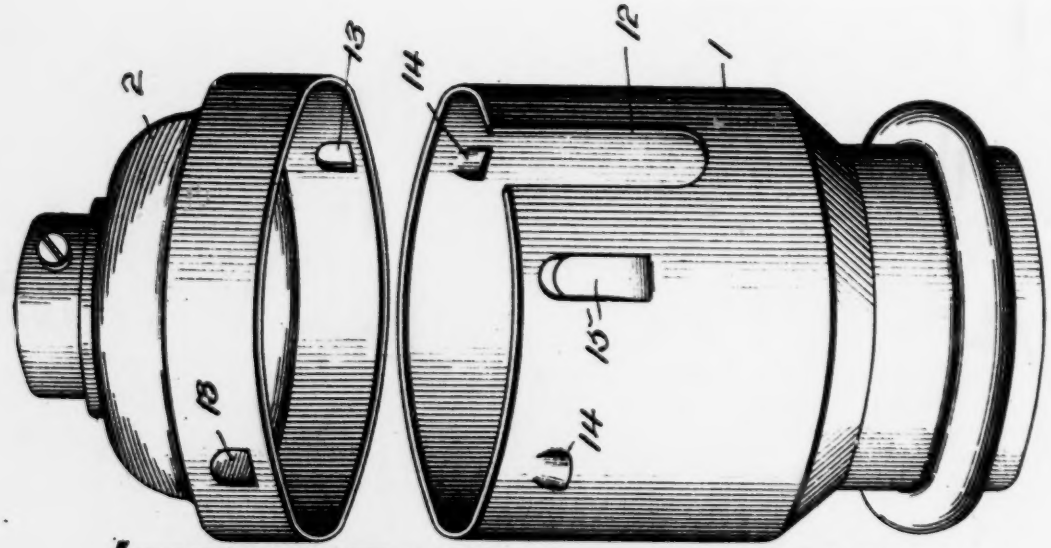
United States Circuit Court
District of New Jersey

Weber Electric Co.,
Complainant.
vs.
E.H.Freeman Electric Co.,
Defendant.

In Equity

On Patent No.743,206.




"DEFENDANT'S EXHIBIT
ILLUSTRATIVE DRAWING OF
WEBER PATENT 743206."

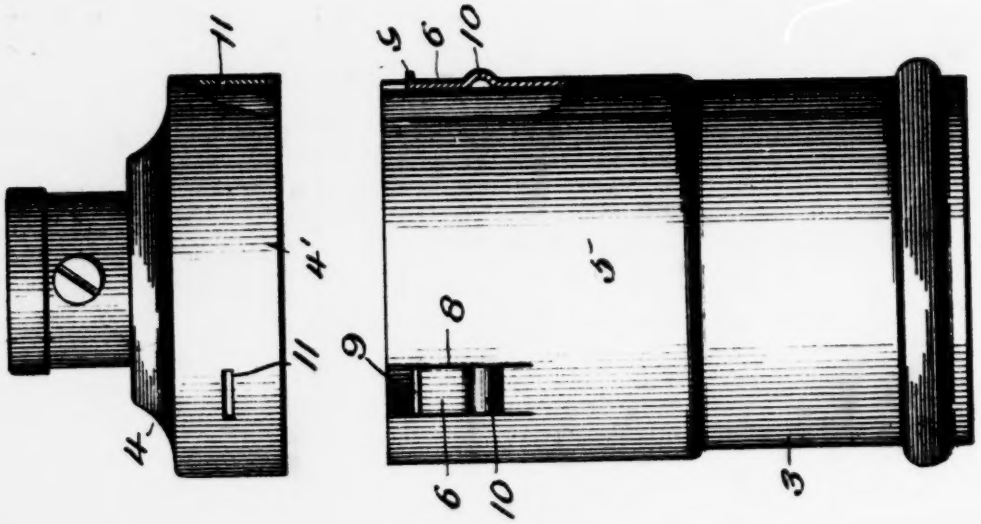
3/10/10

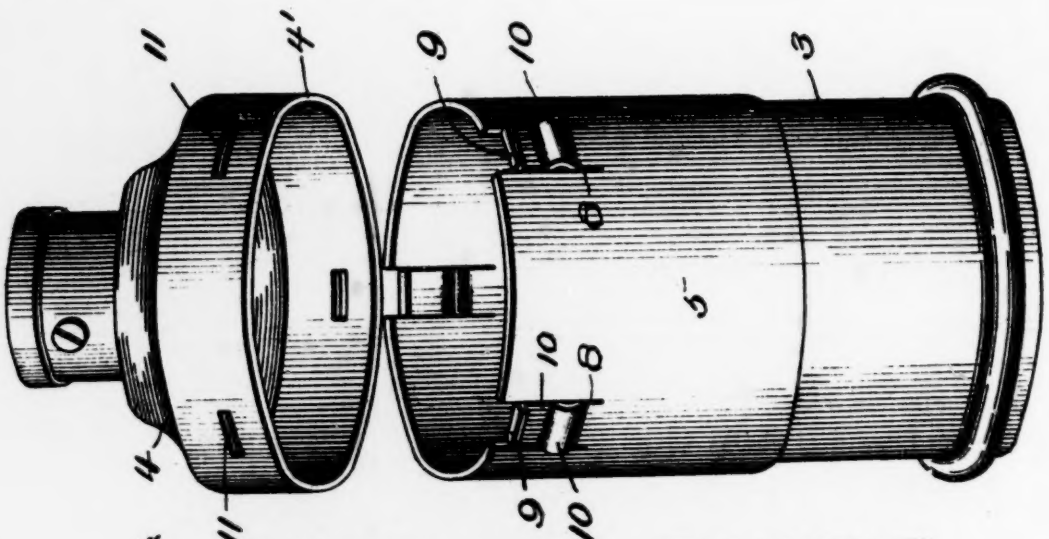
Charles E. Gordon
Special Examiner

United States Circuit Court
District of New Jersey
Weber Electric Company
Complainant.
vs.
E.H.Freeman Electric Co.
Defendant.

In Equity

On Patent No. 743,206.




"DEFENDANT'S EXHIBIT:
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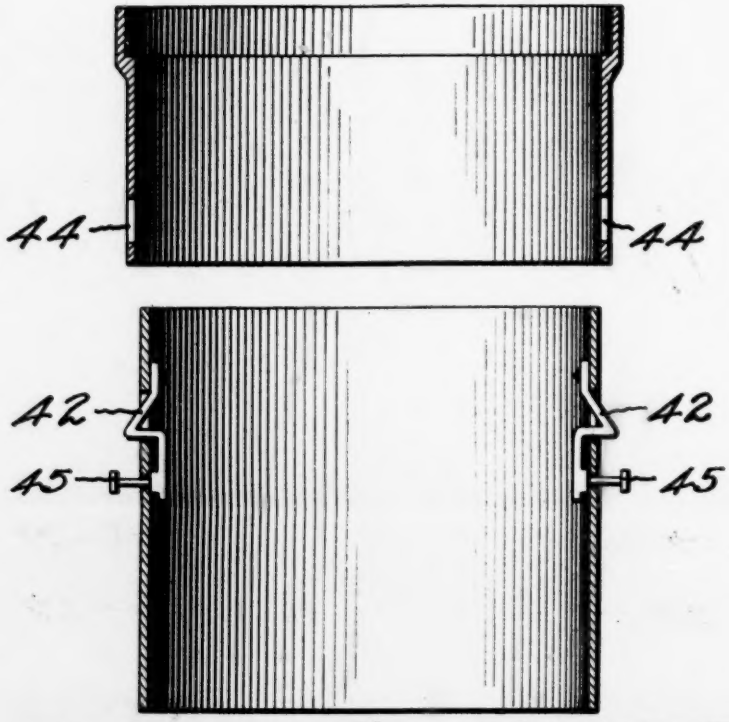
Charles Ericsson




DEFENDANT'S EXHIBIT
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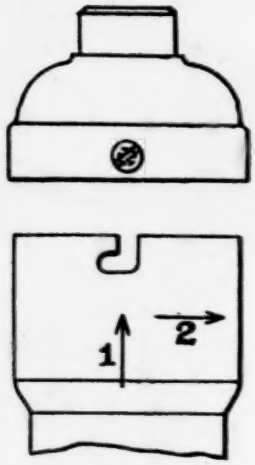
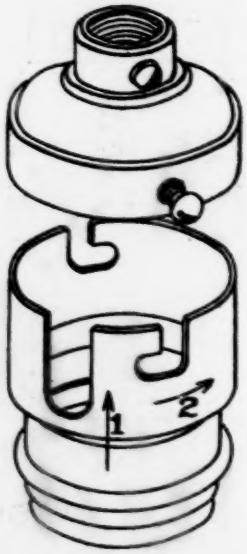
## LANGE TYPE SOCKET




## WIRT PATENT 587,027

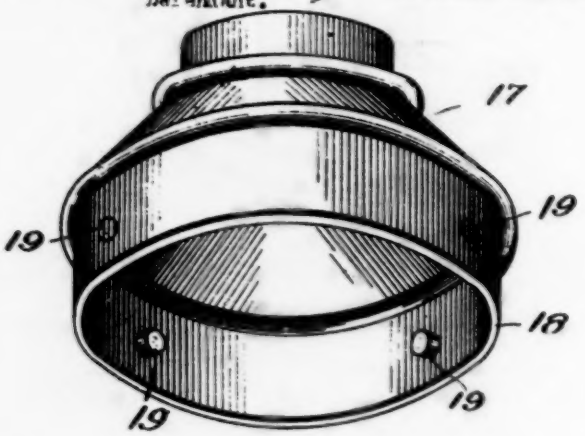


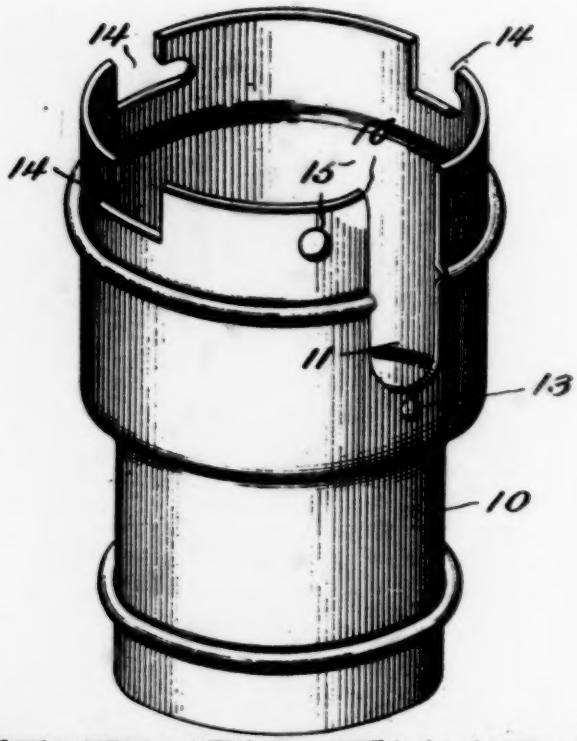
United States Circuit Court
District of New Jersey.

Weber Electric Company
Complainant.
vs.
E.H.Freeman Electric Co.
Defendant.

In Equity

On Patent No. 743,206.




"DEFENDANT'S EXHIBIT
ILLUSTRATIVE DRAWING OF
FREEMAN PATENT 927344"

3/10/10

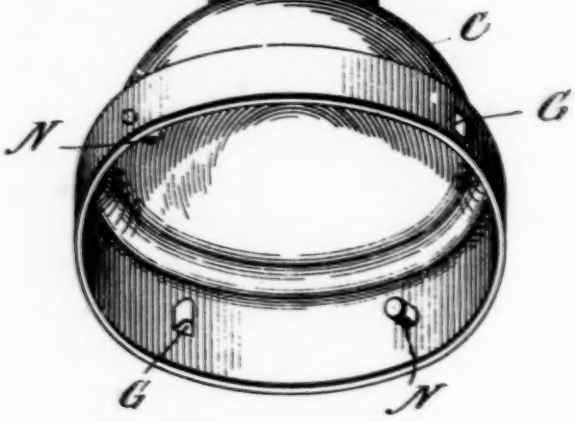
Charles E. Gordon
Special Examiner

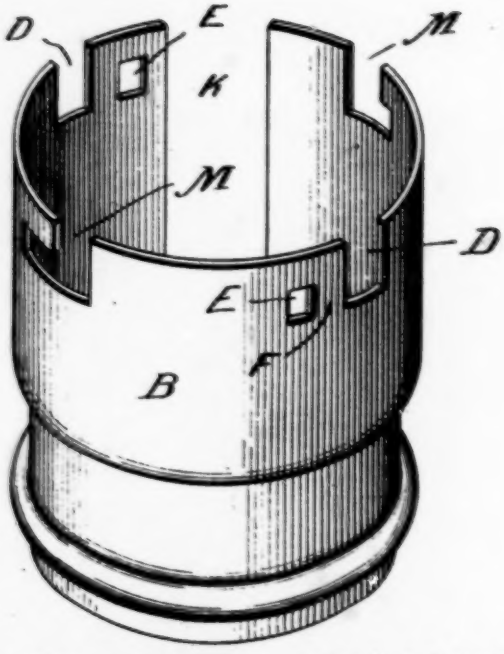
United States Circuit Court
District of New Jersey

Weber Electric Company,
Complainant.
vs.
E.H.Freeman Electric
Company,
Defendant.

In Equity

On Patent No.743,206



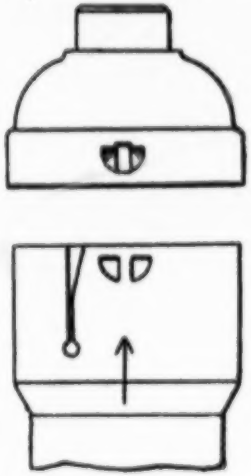

"DEFENDANT'S EXHIBIT
ILLUSTRATIVE DRAWING OF
KENNEY PATENT 712686"

3/10/10

Charles E. Gordon
Special Examiner.

83

UNION SOCKET Nº1



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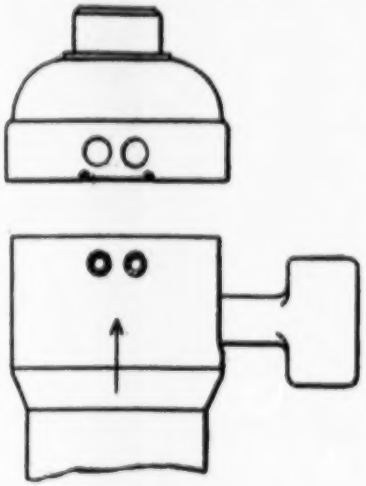
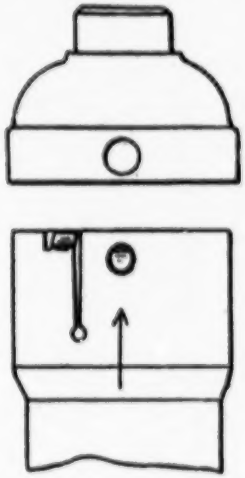


WIRT SOCKET



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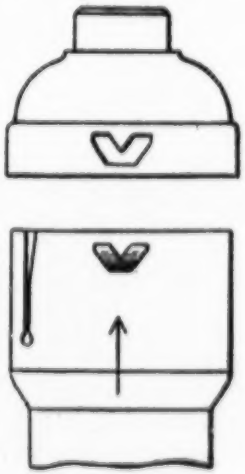

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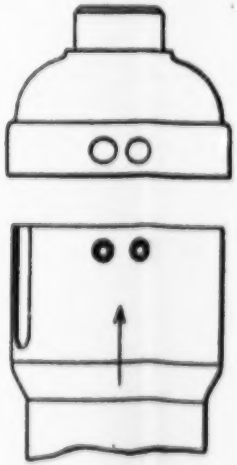
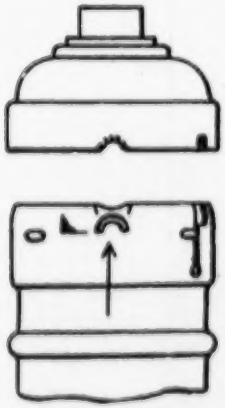


CUTLER—HAMMER KEYLESS SOCKET

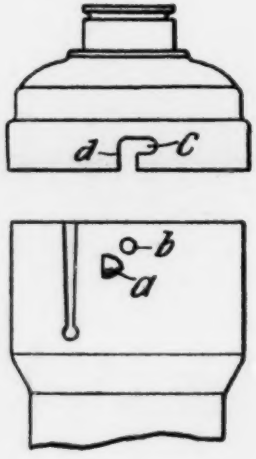


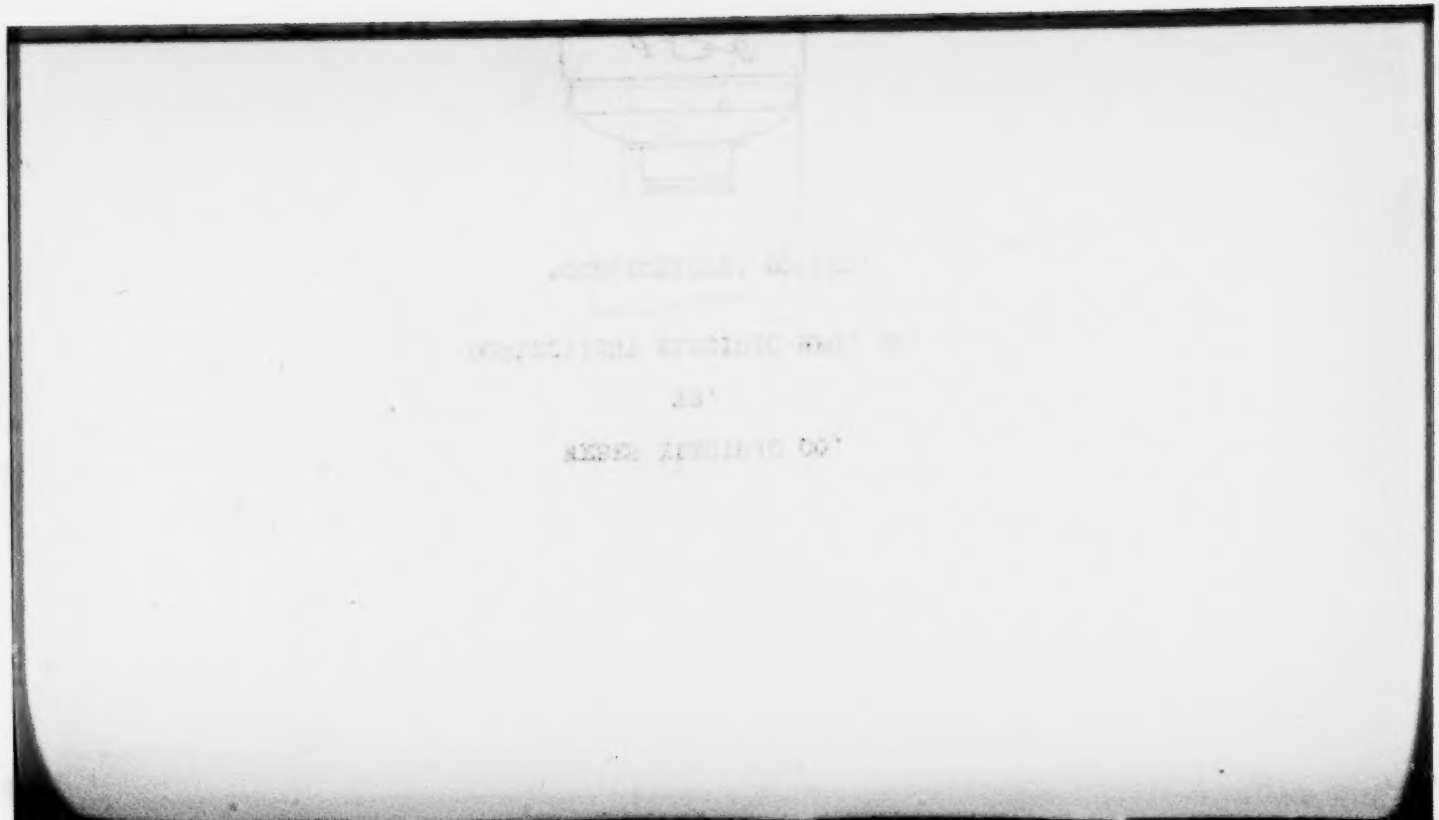
WEBER ELECTRIC CO.

VS.

CONNECTICUT ELECTRIC MFG. CO.

"CONNECTICUT" SOCKET.





APR 9 1923
JAMES D. MAHER
CLERK

No. 7[redacted]273

IN THE

# Supreme Court of the United States.

WEBER ELECTRIC COMPANY, PETITIONER,

*vs.*

E. H. FREEMAN ELECTRIC COMPANY,
RESPONDENT.

## BRIEF FOR RESPONDENT.

LIVINGSTON GIFFORD,
DAVID P. WOLHAUPTER,
*Counsel for Respondents.*

J. D. MILANS & SONS, 701 EIGHTH STREET, N. W., WASHINGTON, D. C.

# Supreme Court of the United States.

WEBER ELECTRIC COMPANY, PETITIONER,

*vs.*

E. H. FREEMAN ELECTRIC COMPANY, RESPONDENT.

## BRIEF FOR RESPONDENT.

We respectfully submit the following points in opposition to the petition for writ of certiorari.

I.

The validity of the patent is not in issue.

The eight decisions rendered between March 25, 1913, and January 22, 1919, by Judges Ray, Dodge, Rellstab, A. N. Hand, and the Circuit Court of Appeals for the Second Circuit, sustaining the patent, are acquiesced in and are not questioned by the C. C. A. decision of the Third Circuit in this case. The sole point upon which the decision rests is that the specific lamp socket of the defendant does not infringe.

It has not been the custom of this Court to grant the writ of certiorari in patent cases where the only question involved was one of infringement by a particular defendant.

A review of the decisions shows that generally the granting of the writ has been confined to cases either where the validity of the patent was in issue or where an important question of patent law was involved.

Here the question of infringement involves no unusual or doubtful question of law. It is simply the ordinary question as to whether a particular piece of mechanism infringes the terms of a claim, either taken literally or in contradistinction to the prior art. This question has been decided negatively by the Third C. C. A., and it is by no means a question of public or general interest, such as the question of the validity of the patent or doubtful questions of general patent law.

Moreover, we will show later on that the particular mechanism of the respondent held not to infringe differs substantially with respect to the limitations of the claim from any mechanism of any other manufacturer, and particularly from the mechanism held to infringe by the Second C. C. A., and that respondent's mechanism is made under a patent of its own, issued more than ten years ago.

Moreover, it will also be shown later that because the Weber patent in suit will expire next November, no decision could be rendered by this Court until after its expiration and no injunction could be obtained pursuant thereto; wherefore the matter in issue reduces itself to a sole question of money recovery, in which no one can possibly have any interest excepting the parties to this suit.

We submit that the mere question whether a specific lamp socket of a particular defendant infringes or not is not a question of sufficient public and general interest to warrant the granting of the petition.

## II.

The Weber patent, having issued November 3, 1903, will expire next November, and, therefore, should this petition be granted, it will be impossible for this Court

to reach the case for argument, much less for decision, until after the expiration of the patent. Therefore no injunction could be obtained against this defendant or the public, even should the decision of this Court be in favor of petitioner. The only question at issue, therefore, is one of money recovery, and the only effect of an ultimate decision in favor of plaintiff would be to precipitate the parties into an accounting, with all of the attendant litigation for which accountings are notorious.

We submit that it is certainly not a matter of public and general interest whether such an accounting shall be had or not.

## III.

The alleged infringing socket was invented by Mr. Freeman prior to July 15, 1908, on which date he applied for patent No. 927,344, issued July 6, 1909, reissued May 30, 1911, No. 13,247 (Rec., p. 574). It was immediately manufactured and sold by the defendant company, under license dated February 11, 1909 (Rec., pp. 553 and 557), and this has continued ever since. Although this suit was commenced April 27, 1909, and answer filed July 5, 1909, through no fault of defendant, the interlocutory decree was not entered until December 23, 1918, and the decision in the Circuit Court of Appeals, August 13, 1919. During all the eleven years, from 1909 until 1920, that defendant has been marketing its lamp socket under its own patent, plaintiff was pushing other subsequently commenced suits to hearing against straight-thrust lamp sockets, obviously for the purpose of first getting the patent sustained against clear infringements before risking a decision on defendant's remote construction. We refer particularly to the decisions of Judge Ray, March 25, 1913, of the Second Circuit Court of Appeals, Feb-

ruary 10, 1914, of Judge Dodge, April 9, 1914, and of Judge Rellstab, July 29, 1915.

That the decision of the Third Circuit Court of Appeals, of which petitioner now complains, was not rendered until as late as August 13, 1919, so near the expiration of the patent that no decision of this Court could afford any injunctive relief or be of any public and general interest, is, therefore, no fault of this defendant.

IV.

Moreover, in view of the delay in obtaining the Third C. C. A. decision, as late as August 13, 1919, for which delay defendant was not responsible, it is inequitable that the defendant should now be put to an accounting extending away back eleven years. The Lower Courts have taken occasion to denounce the inequity of an outcome like this.

> *Kellogg Switchboard & Supply Co.* vs. *Dean Electric Co.*, 231 Fed., 194, 197.

V.

To avoid possibility of mistake or confusion we should point out that Claim 4 of the Weber patent No. 743,206 is the only one which was discussed by both the second and third C. C. A. and therefore the only one as to which there can be any pretense of conflict.

The statement at the head of the opinion of the second C. C. A. says:

> "Action is brought on the Weber patents 743,-206 (Claim 4) and 916,812 (Claim 1)."

The latter patent was not before the third C. C. A. Hence the only claim before both of them was Claim 4 of 743,206 and that is the only claim to which our attention is necessary.

## VI.

The pamphlet submitted with the petition, entitled "Court Opinions," might create the totally erroneous impression that on the issue raised against the Third C. C. A. opinion by the petition, there was great weight of judicial authority in favor of the petition. Any such impression would be totally wrong and entirely contrary to the facts.

Among all these decisions there were at least eight in which the question raised by the petition was not and could not be in issue, because the alleged infringements were truly telescopic or straight-thrust, like the Weber patent. In so far as these eight decisions referred to the matter, they were opposed to the view of the petition, because apparently sustaining the Weber patent in comparison with the prior art as being for a straight-thrust construction.

It will therefore be noted that in every decided case on the Weber patent, except in the present case and the recent Connecticut case, the socket is one in which the sleeve and cap are interlocked by a single direct movement, viz., *a straight thrust.*

In the Cutler-Hammer case, Judge Hand defined the invention of the Weber patents as follows (italics ours), comparing it with the Kenney patents 712,685 and 712,686 (Tr., pp. 636 and 640) each of which shows a bayonet joint socket having a lock the parts of which are engaged by relative rotative movement of the cap and sleeve:

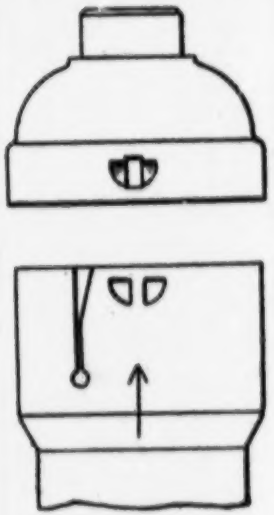
> "I think it established by the decisions of Judge Ray, Judge Rellstab and the Circuit Court of Appeals (212 Fed., 948, 950) that the Kenney socket is locked by a rotative movement, *whereas the Weber socket is locked by a direct longitudinal thrust.* * * *

> "It is true that the *first* Weber socket may be locked by a rotative as well as a longitudinal movement, but a longitudinal thrust is both the natural, easy, *and, according to the affidavits submitted by the Webers, the intended method of engagement.* * * *
>
> "Judge Rellstab likewise said in discussing the Kenney United States Patent No. 712,686, at 226 Fed., p. 485:
>
> * * * No interlocking of the Kenney members could be effected automatically by telescopic pressure, a rotary movement of the members against each other was absolutely necessary to put the radial projections and the intermediate lugs into position to effect a locking engagement."
>
> "This distinction is not one of non-essentials. The *simple direct thrust* by which the Weber socket locked automatically gave rise to such a general response from the trade that the Circuit Court of Appeals was persuaded that it possessed a novelty and utility which made the device patentable. * * * It was the pioneer device in which the socket was automatically locked by a *direct longitudinal thrust.* * * *"

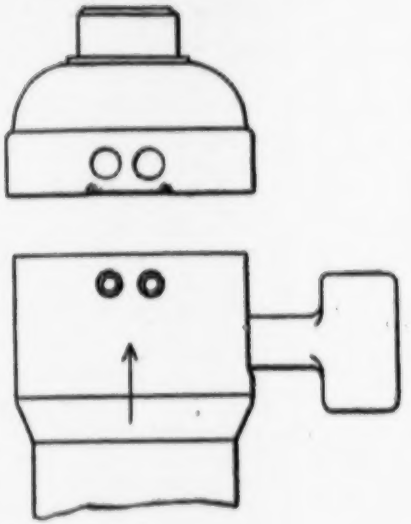
The United States Circuit Court of Appeals for the 2nd Circuit in affirming Judge Hand's decision, said, as to both Weber patents, on the question of infringement, referring to the Cutler-Hammer sockets:

> "If they engage by *a straight thrust,* infringement is too clear for discussion, if they fit only under force, it is but a question of degree whether thumb pressure suffices, or hand power is increased by the use of Klein's lever, it is hand power just the same. *The vital point is that Weber's way is to engage by a straight* thrust, and release by pressure on the sleeve at a point under an engaging projection." (Italics ours.)

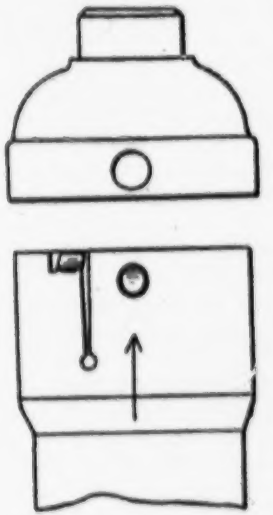
UNION SOCKET Nº1



UNION SOCKET Nº3



WIRT SOCKET



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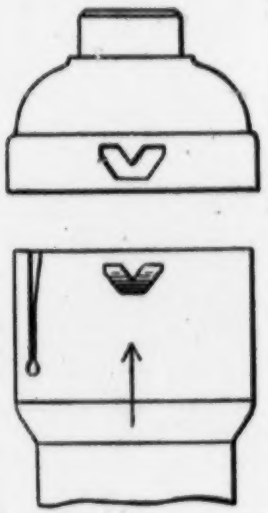
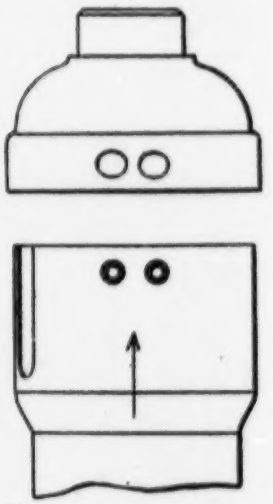
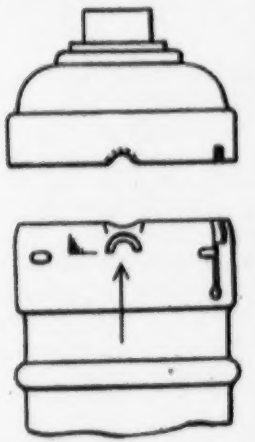


UNION SOCKET Nº4



CUTLER–HAMMER KEYLESS SOCKET



It will be noted that Judge Hand in his opinion refers to and discusses the decisions of Judge Ray (204 Fed., 79) and of the United States Circuit Court of Appeals for the 2nd Circuit (212 Fed., 948, 950) in the National Gas case, the decision of Judge Rellstab (226 Fed., 482) in the Union Electric case; and the decision of Judge Dodge (226 Fed., 481) in the Wirt Manufacturing case.

Referring to the accompanying drawing, it will be seen that in every instance the cap and sleeve held to infringe the Weber patents were capable of being automatically interlocked by a "direct longitudinal thrust," as Judge Hand defines it, or a "straight thrust," as the United States Circuit Court of Appeals for the 2nd Circuit defines it.

It is further worthy of notice that the last decision filed by Judge Knox, February 18, 1920, in the Second Circuit, shows that he differs from the Second C. C. A., saying:

> "Were it not for the prior adjudications upon these patents in this Circuit, I think it altogether possible that I should upon the present motions for injunctions, reach a conclusion differing from the one I am about to pronounce. In view, however, of the most recent decision of the Circuit Court of Appeals, wherein the Weber patents were discussed, I feel myself bound to find infringement upon the part of the defendant."

Altogether, therefore, the weight of judicial authority contained in petitioner's pamphlet entitled "Court Opinions" is very decidedly against the ground taken in the petition.

## VII.

The socket of this defendant which was held not to infringe by the Third C. C. A. is not the same as the

socket held to infringe by the Second C. C. A. in its decision of January 2, 1920, in particulars made important by the claims of the Weber patent in issue. Therefore the decision of the Second C. C. A. holding that a different socket infringed, is no authority for the statements of the petition that this defendant's socket infringes or that the Third C. C. A. was wrong in holding non-infringement.

The only claim as to which the petition alleged a difference between the Second and Third Circuit Courts of Appeals is claim 4 of the Weber patent No. 743,206. The Weber patent No. 916,812, which was also before the Second C. C. A., was not before the Third C. C. A., and not alleged to be infringed by the respondent's socket.

The Connecticut socket held to infringe by the Second C. C. A. differed radically from the Freeman socket held not to infringe by the Third C. C. A. That is, the Connecticut socket *did* have, and the Freeman socket *did not* have the construction of recess and slit, thus specifically specified as an essential by claim 4—"One of said members being provided with a recess and the other having a correspondingly located transverse slit and the wall on one side thereof displaced to form a projection bevelled or inclined toward said recessed member and terminating abruptly at said slit."

In the Connecticut socket, held to infringe by the Second C. C. A., *there was* a "transverse slit," and this slit had "the wall on one side thereof displaced to form a projection," and this projection terminated "abruptly at said slit." The socket held not to infringe by the Third C. C. A. had a hole. It had no "slit" at all, and it had no "wall" "displaced," and no projection "terminating abruptly at said slit," or even at the hole.

The vital words of claim 4, above quoted, exactly describing the Connecticut socket by distinguishing against the respondent's socket, were inserted by amendment in the course of the application for the Weber patent, to avoid a rejection on the prior art, and, therefore, under the decisions of this Court, cannot be disregarded, viz:

Hubbell vs. United States, 179 U. S., 77.
Corbin Cabinet Co. vs. Eagle Lock Co., 150 U. S., 38-40.
Shepard vs. Carrigan, 116 U. S., 593, 598.
Leggett vs. Avery, 101 U. S., 256.
Knapp vs. Morse, 150 U. S., 221, 227.

To show how strenuously this was urged by respondent before the Third C. C. A., we make the following excerpt from respondent's argument before the Third C. C. A.:

> "In the original claim (of the application filed by Weber) the projection was described as 'terminating abruptly.' The language was,
>
> " 'projection bevelled or inclined toward said recessed member and terminating abruptly.'
>
> "Under stress of rejection on Oetting and also on Kenney, and to avoid any question of anticipation, the manner of forming the 'projection' 'terminating abruptly' was added as a limitation; this manner of forming being stated to be by a
>
> " 'transverse slit and the wall on one side thereof displaced.'
>
> "The limitation by the amendment to the making of the Weber projection by a 'transverse slit and the wall on one side thereof displaced' clearly distinguished against the stud or pin projection of the Kenney United States patent, and the projection formed by bending the sheet metal of the

shell of the Oetting and the Kenny British patent; but it likewise distinguished against the projection of the defendant's device, which is a pin or stud similar to Kenney and referred to in the defendant's Freeman patent (Rec., p. 574) as 'lug, 19.'

"Therefore, the limitation inserted by amendment as to the formation of the projection distinguishes against the defendant's projection, the same as against the prior art projection, which it was inserted under the stress of avoiding.

"Yet more, the applicant was not satisfied with the words 'terminating abruptly' of the original claim or with the words, already referred to, introduced by amendment, but to make his avoidance of the references doubly sure, he also inserted the words 'at said slit,' so as to specify not merely a projection 'terminating abruptly,' but one whose abrupt termination was located 'at said slit.'

"Obviously the projecting stud of Kenney or the projecting bent metal of Oetting or Kenny British, not having any slit, were not located 'at said slit'; but no more is the stud of defendant.

"The round hole in defendant's sleeve, numbered 15 in the Freeman patent, is not the 'projection' to which the above amendments of the claim apply, and is not a slit. It is more like the square hole, lettered E, of the Kenney patent, for engagement with the projection. And even if this round hole of defendant were distorted into a slit, it could not be said that there was any projection 'terminating abruptly' 'at said slit' or that it had 'the wall on one side thereof displaced to form a projection.'

"Finally, by no juggling of language does it appear possible to apply the language of this amendment to defendant's 'projection' short of reading the amendment entirely out of the claim."

## VIII.

The petition and brief repeatedly and unfairly attempt to minimize the importance of the rotation in the operation of respondent's socket by using the expression "a *slight* rotational movement" (p. 2), or "*slight* rotational component" (p. 13), manifestly for the purpose of assimilating it to the "telescopic" requirement twice repeated in claim 4.

The word "slight" is totally misleading in this connection. The rotation of defendant's socket is the whole thing so far as concerns security against detachment. Until respondent's socket is rotated there is no interlock whatsoever against disengagement, and the slight longitudinal movement is simply to get the parts into position to be engaged by the rotational movement. In designating the respondent's rotational movement as "slight," petitioner has put the cart before the horse, otherwise it could not make the argument upon which the petition is based.

The petitioner on pages 18, 19, 20 and 21 of its petition and brief attempts, by argument, to write into the original Weber patent a definition clearly opposed to the meaning and scope of the patent as interpreted by the prior decisions, and by the Webers themselves. In that connection it seems only necessary to draw the attention of Court to the fact that in the decided cases on the Weber patents the courts have quite uniformally accepted the definition of the term "telescopically" as occurring in the Weber patent to be the common sense and intended meaning of that term, namely, a direct straight thrust movement to effect the locking together of the cap and the shell.

Furthermore, referring to the decision of Judge Hand found printed on page 65 of "Court Opinions" filed with

the petition, Judge Hand draws attention to the fact that "affidavits submitted by the Webers (page 67, "Court Opinions") recite that the longitudinal thrust was the intended method of engagement of the cap and shell, as contemplated by the Weber invention.

It must, therefore, be apparent to this court that the petition for certiorari is contrary to the weight of opinion of the decided cases on the Weber patent and is utterly inconsistent with the position taken by the Webers in the Cutler-Hammer case. Hence the artificial definitions which are now attempted to be carried forward in the argument on the present petition can only serve to emphasize the fact that the Weber patent has been accorded the utmost limit of consideration in being construed by the prior court decisions to only cover a direct or straight thrust locking movement for fastening together the cap and shell of the lamp socket.

## IX.

That the professional patent expert is capable of demonstrating that white is black was never better illustrated than by the petitioner's argument.

It is much like arguing that a screw is the same thing as a round nail because the screw has a "slight" rotational movement while the nail might be slightly rotated in being driven without any particular harm. Yet any common-sensed person would see at once that a screw is not a nail, or the equivalent of a nail, and no amount of verbal juggling of patent experts could convince them that it was.

So, here, the juggle of words by which petitioner attempts to argue that respondent's construction is like or equivalent to the Weber construction, leads to the absurd conclusion that the well known bayonet joint is the same as the telescopic joint.

Lexicographers, as well as mechanics, rightfully place the bayonet joint and the telescopic joint in separate classes of joints. There are no two classes of joints that are more distinct. Weber employs one class and his improvement relates to that. Defendant employs another class and its improvement relates to that other. In the defendant's socket it is the bayonet joint which opposes a pull tending to separate parts. In the Weber socket it is the "snap action" itself formed by the "recess" and "slit" with "displaced" "wall," which directly opposes the pulling of them apart. The principle of the Weber construction is that the "snap action" itself constitutes the lock against longitudinal pull. In Weber the "snap action" is itself the "interlock," or, as the claim says, the Weber device is adapted to automatically "interlock with a snap action." On the contrary, in defendant's device the interlocks which prevent separation by longitudinal pull are the bayonet joints, as it was in the prior art. These bayonet joints do not "interlock with a snap action"; on the contrary, the snap action does not occur until after the bayonet joints are interlocked, and then only to close the door against such a return rotative movement as would unlock the bayonet joints.

The transverse slit wall projection of Weber is the feature, in the language of the claim, "adapted to automatically interlock with a snap action when telescopically applied." In other words, it is adapted to be assembled by a straight thrust and the snap action itself opposes straight pull separation. Defendant's stud projection is incapable of any such function, but, on the contrary, engages by rotary movement solely and opposes rotary movement solely.

This is one of those cases which so commonly occur. The article, a lamp socket, was not broadly new. The

record showed lamp sockets for precisely the same purpose to be old in patents and in actual use. The Patent Office required limitations of the claims to avoid them. The Court can readily appreciate, therefore, that the Third C. C. A. was right in giving Weber the status of progress in this limited art, described by this Court in its latest patent decision, *Bone* vs. *Marion County*, 251 U. S., 134, saying, the "patent was a step, not a leap, in that progress, and the only originality that can be accorded it is in its special form, and there can be no infringement except by a copy of that form or a colorable imitation of it."

The first decision of the C. C. A. of the Second Circuit, when the eminent patent judges Lacomb and Coxe were on the bench, "who unfortunately are no longer there," correctly rated the Weber invention when it stated, in the language of Judge Lacomb (212 Fed., 948) (Italics ours), "the *precise* combination of interlocking parts is undoubtedly novel; there is nothing *just* like this in the prior art." The Third C. C. A. has followed the view embodied in the above words and it would be unfortunate if a patent depending upon such words as "precise" and "just" for its novelty should be expanded to an extent to dominate an industry by disregarding differences in principle and mode of operation, and apply the doctrine of equivalents as though it depended upon similarity in result.

At any rate, there is certainly no reason of public or general interest why this Court should go into a mere question of infringement where the validity of the patent is not in issue and where the only possible effect of a decision adverse to the Third C. C. A. would be to precipitate this defendant into an accounting under an

expired patent, in which accounting no one would have the slightest interest excepting the parties to this suit.

It is therefore respectfully submitted that the petition for certiorari is without proper foundation or justification and should therefore be denied.

Respectfully,

LIVINGSTON GIFFORD,
DAVID P. WOLHAUPTER,
*Counsel for Respondents.*